

March 20

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [REDACTED] 1921

No. [REDACTED] 37

OKLAHOMA NATURAL GAS COMPANY, PLAINTIFF IN
ERROR,

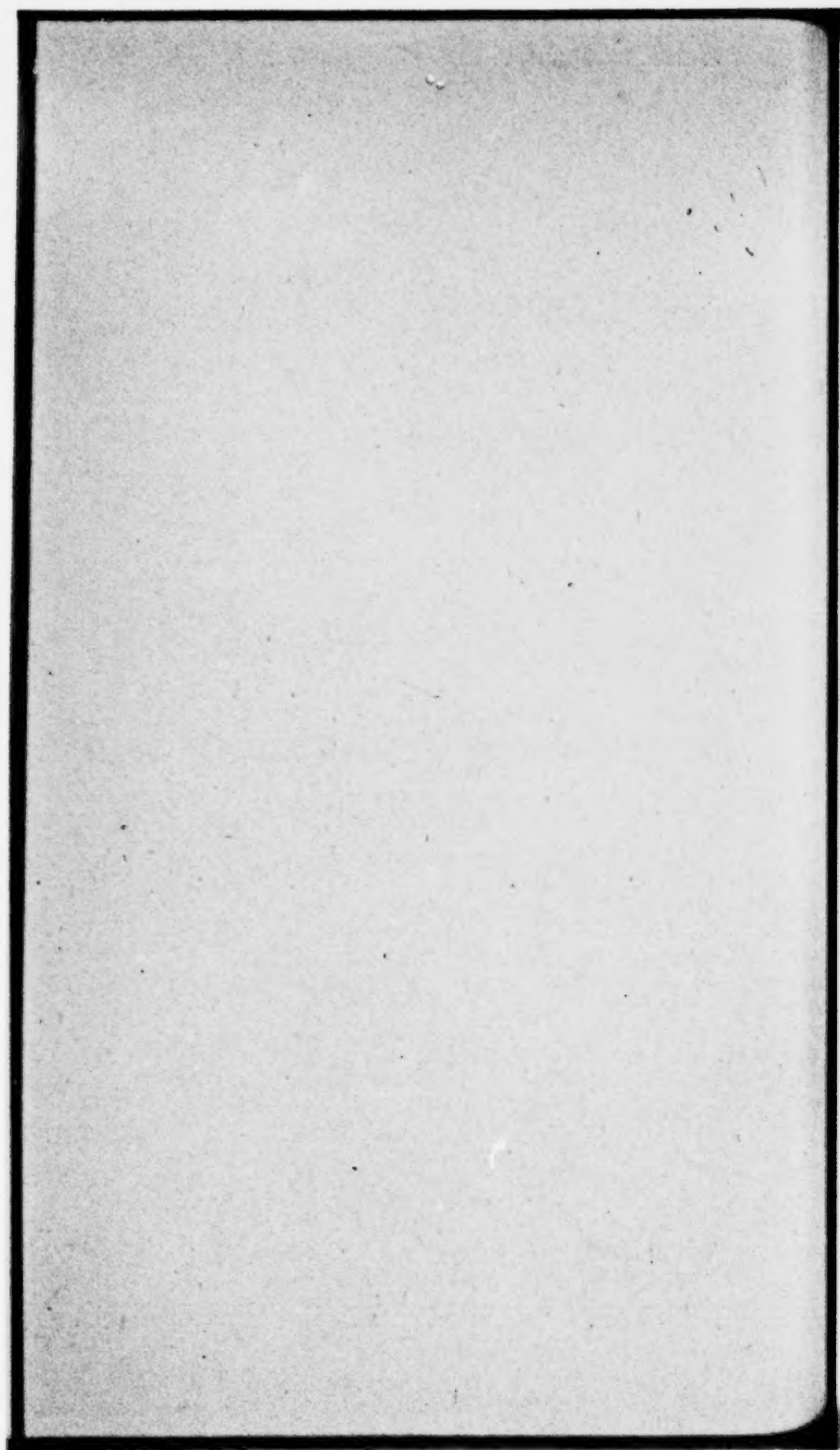
vs.

THE STATE OF OKLAHOMA ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA

FILED APRIL 27, 1920.

(27,634)



(27,634)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 312.

OKLAHOMA NATURAL GAS COMPANY, PLAINTIFF IN
ERROR,

vs.

THE STATE OF OKLAHOMA ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

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Return to Writ.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Oklahoma, in the City of Oklahoma City, Oklahoma, this the 19th day of April, A. D. 1920.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma,
By — — —, *Deputy.*

[Stamped:] Filed in Supreme Court of Oklahoma Apr. 14, 1920. William M. Franklin, Clerk.

In the Supreme Court of the United States.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Appellant,

vs.

THE STATE OF OKLAHOMA, CHARLES H. RUTH, H. F. TRIPP, T. F. DONNELL, Charles B. Selby, and George M. Callihan, Appellees.

Citation.

UNITED STATES OF AMERICA, ss:

To the State of Oklahoma and S. P. Freeling, Attorney General, its attorney of record, and to Charles H. Ruth, H. F. Tripp, T. F. Donnell, Charles B. Selby, and George M. Callihan, Greeting:

You, and each of you, are hereby cited and admonished to appear in the Supreme Court of the United States at Washington in the District of Columbia within thirty days from the date hereof pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Oklahoma, wherein Oklahoma Natural Gas Company, a corporation, is appellant, and you and each of you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States this the 10th day of April, in the Year of our Lord 1920.

EDWARD DOUGLASS WHITE,

Chief Justice of the Supreme Court of the United States,

By THOS. H. OWEN,

Chief Justice of the Supreme Court of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,

Clerk of the Supreme Court of the

State of Oklahoma.

By P. S. HILLMAN, *Deputy.*

2 Copy of the within citation is acknowledged by each of us to have been received on this the 10th day of April, 1920, and each of the said appellees in the foregoing citation now and hereby enters its and his general appearance in the said cause in the Supreme Court of the United States.

THE STATE OF OKLAHOMA.

By S. P. FREELING,

Atty. General,

By E. L. FULION,

Asst. Atty. Genl.

CHAS. B. SELBY,

GEORGE M. CALLIHAN,

T. F. DONNELL,

CHARLES H. RUTH,

H. F. TRIPP.

3 [Stamped:] Filed in Supreme Court of Oklahoma Apr. 10, 1920. William M. Franklin, Clerk.

In the Supreme Court of the United States.

In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Appellant,

vs.

THE STATE OF OKLAHOMA, CHARLES H. RUTH, H. F. TRIPP, T. F. Donnell, Charles B. Selby, and George H. Callihan, Appellees.

Petition for Writ of Error.

Oklahoma Natural Gas Company, appellant in the above entitled and numbered cause, feeling itself aggrieved by the decision and judg-

ment of this court rendered in said cause on January 20, 1920, and by this court's denial on March 30, 1920, of this appellant's petition for rehearing therein, comes now by Ames, Chambers, Lowe & Richardson, its attorneys of record herein, and petitions the court for an order allowing this appellant to prosecute a writ of error to the Honorable Supreme Court of the United States under and according to the Constitution and laws of the United States and the rules of said court in that behalf made and provided, and for an order that all further proceedings herein be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States, and your petitioner will ever pray.

AMES, CHAMBERS, LOWE &
RICHARDSON,
Attorneys for Appellant.

4 [Stamped:] Filed in Supreme Court of Oklahoma Apr. 10,
1920. William M. Franklin, Clerk.

In the Supreme Court of the United States.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Appellant,

vs.

THE STATE OF OKLAHOMA, CHARLES H. RUTH, H. F. TRIPP, T. F.
Donnell, Charles B. Selby, and George H. Callihan, Ap-
pellees.

Assignments of Error.

Now comes Oklahoma Natural Gas Company, a corporation, appellant in the cause above entitled, and says that in the record and proceedings in said cause there is manifest error in this, to-wit:

1.

The Supreme Court of the State of Oklahoma erred in affirming the order of the Corporation Commission of the State of Oklahoma appealed from.

2.

The Supreme Court of the State of Oklahoma erred in holding that the order of the Corporation Commission of the State of Oklahoma appealed from does not deprive appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

3.

The order of the Corporation Commission of the State of Oklahoma appealed from denied to this appellant due process of law and operated to deprive this appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, in this, to-wit:

5 (a) The pleadings filed before the Corporation Commission of Oklahoma did not ask for a discount or rebate upon the bills of consumers, and the process served upon the appellant did not disclose that any discounts or rebates upon said bills were contemplated by the Corporation Commission; and the appellant had no notice or knowledge of the contemplated order requiring the discounting or relating of the bills of those patrons for low pressure until the order requiring the discounting or rebating of said bills was actually made, and the appellant therefore had no opportunity to defend against said order, or to produce either evidence or argument against its propriety, justice or legality.

(b) The evidence showed and the Corporation Commission found that the appellant had not been negligent in the performance of its public duty, and the Corporation Commission did not find that any person was charged for gas which he did not receive and use, but the Commission's order required a discount upon the bills for gas furnished during the two previous months, not because the appellant's patrons did not use and consume the amount of gas for which they were charged, but merely because the appellant could not furnish them all the gas they wanted or needed. Said order was therefore arbitrary and unreasonable, and was made without evidence legally justifying the same, and therein operated to deprive the appellant of its property without due process of law.

(c) The Commission's order purports to treat appellant's duty of furnishing an adequate supply of natural gas as an absolute duty, and to penalize it for failure to do so, although the supply available in the fields had become inadequate and although it
6 was humanly impossible to furnish an adequate supply.

(d) The order of the Commission requiring the rebating or discounting of bills incurred in the past was not an order regulating rates, but was an order depriving the appellant of indebtednesses which had accrued to it under an existing established rate, and was made in a proceeding in which there were neither proper parties, proper pleadings, proper notice, and without evidence legally warranting the same.

(e) The order of the Corporation Commission declared a four-ounce pressure to be normal pressure, three-ounce pressure as three-fourths normal, two ounce pressure as one-half normal and one-ounce pressure as one-fourth normal; and the Commission ordered that during the period of time when the pressure was four ounces the

full bill should be paid, that for that period of time when the pressure was three ounces only three-fourths of the bill should be paid, that for that period of time when the pressure was two ounces, only one-half the bill should be paid, that for that portion of the time when the pressure was one ounce, only one-fourth of the bill should be paid, and that for all gas used under one ounce, no part whatsoever of the bill should be paid; notwithstanding the evidence showed that the difference between the quantity and heating value of natural gas furnished at four ounces pressure and that furnished at three ounces pressure is less than one-half of one per cent, and the difference between the quantity and heating value of gas furnished at four ounces pressure and that furnished at two ounces pressure is less than one per cent, and the difference between the quantity and heating value of gas furnished at four ounces pressure and at one-ounce pressure is less than one and one-half per cent.

The difference in said pressure therefore does not justify the difference in the amount of the rebate or discount awarded, and is purely arbitrary and unreasonable.

(f) The Corporation Commission did not inquire into, ascertain or consider the particular facts with reference to the individual consumers to whom the rebates or discounts were awarded, but each and every patron residing in the district in which the low pressure existed during any given period was awarded the discount upon his bill for that month, even though, during the period of low pressure he was using coal, oil or some other fuel, and even though the whole amount of gas which he consumed was consumed during the period of normal pressure.

(g) The order of the Commission relieved appellant's patrons from the duty of paying any sum whatsoever for the gas which they used at less than one-ounce pressure, and thereby operated to take appellant's property without any compensation whatsoever and to deprive appellant of its property without due process of law.

(h) If the order of the Commission was legislative in character, then the effort of the Commission to give it a retroactive effect, and to apply it to bills incurred during the past and before the making of the order would have the effect of divesting appellant of property and property rights which had vested in it, and would operate to deprive appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

8 And the Supreme Court of the State of Oklahoma erred in refusing to reverse the said order of said Corporation Commission for each of the reasons hereinabove set forth.

Wherefore, the appellant prays that the judgment of the Supreme Court of the State of Oklahoma affirming the said order of the Corporation Commission of Oklahoma shall be reversed.

AMES, CHAMBERS, LOWE & RICHARDSON,

Attorneys for Appellant.

9 Filed in Supreme Court of Oklahoma Apr. 10, 1920. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Appellant,

vs.

THE STATE OF OKLAHOMA, CHARLES H. RUTH, H. F. TRIPP, T. F. Donnell, Charles B. Selby, and George H. Callihan, Appellees.

Order Allowing Writ of Error.

This cause coming on to be heard on the 10th day of April, 1920, upon petition of the appellant for a writ of error herein to the Supreme Court of the United States, and it appearing that the appellant has filed its assignments of error, it is hereby ordered upon motion of D. A. Richardson, one of the attorneys for appellant, that a writ of error be and it is hereby allowed to have reviewed in the Supreme Court of the United States the judgment heretofore rendered in said cause by this court on January 20, 1920, and the denial by this court on March 30, 1920, of appellant's petition for rehearing herein.

And it further appearing that said appellant has prayed for an order of supersedeas in said cause, it is further ordered that said appellant be required to execute its bond in said cause in the sum of \$35,000.00, and that upon the filing of said bond and its approval by the Chief Justice of this court, it is ordered that all further proceedings be suspended and stayed until the determination of the said writ of error by the Supreme Court of the United States.

10 Ordered, adjudged and decreed this 10th day of April, 1920.

THOS. H. OWEN,

Chief Justice of the Supreme Court of Oklahoma.

Attest:

WM. M. FRANKLIN,

*Clerk of the Supreme Court
of the State of Oklahoma.*

By P. S. HILLMAN,

Deputy. [SEAL.]

11 [Stamped:] Filed in Supreme Court of Oklahoma Apr. 16, 1920. William M. Franklin, Clerk.

In the Supreme Court of the United States.

OKLAHOMA NATURAL GAS COMPANY, a Corporation. Appellant,

vs.

THE STATE OF OKLAHOMA, CHARLES H. RUTH, H. F. TRIPP,
T. F. Donnell, Charles B. Selby, and George H. Callihan, Ap-
pellees.

Writ of Error.

The President of the United States to the Honorable Justices of the
Supreme Court of the State of Oklahoma, Greeting:

Because, in the record and proceedings, as also in the rendition of
the judgment, of a plea which is in said court before you or some of
you, between the parties above named, viz: Oklahoma Natural Gas
Company, a corporation, appellant, and The State of Oklahoma,
Charles H. Ruth, H. F. Tripp, T. F. Donnell, Charles B. Selby, and
George H. Callihan, appellees, your court being the highest court of
said state having jurisdiction to render judgment in the case, there
was drawn in question the validity of a statute of, and an order of,
and an authority exercised under, said state, on the ground of their
being repugnant to the Constitution of the United States, and the
decision was in favor of their validity, and there being manifest
error in said decision, greatly to the damage of the Oklahoma Natural
Gas Company, a corporation, appellant; and we being willing that
if there is error, it should be duly corrected, we do therefore com-
mand you, if judgment be therein given, that under the seal of
your court you send the records and proceedings had in said cause
to the Supreme Court of the United States together with this
writ, so that you have the same in Washington in the District
of Columbia on the 10th day of May, 1920, in the Supreme
Court to be then and there held, that the record may be inspected
by said court and justice done.

Witness the Honorable Edward Douglass White, Chief Justice of
the Supreme Court, the 10 day of April, 1920.

[Seal of the United States District Court, Western District
of Oklahoma.]

ARNOLD C. DOLDE,

*Clerk of the District Court of the United States
for the Eastern District of Oklahoma.*

Allowed:

THOS. H. OWEN,

*Chief Justice of the Supreme Court
of the State of Oklahoma.*

[Seal Supreme Court, State of Oklahoma.]

Attest:

WM. M. FRANKLIN,

Clerk Supreme Court, Okla.,

By REUEL HASKELL, JR.,

Deputy.

13 Filed in Supreme Court of Oklahoma Apr. 10, 1920.
William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Appellant,

vs.

THE STATE OF OKLAHOMA, CHARLES H. RUTH, H. F. TRIPP,
T. F. Donnell, Charles B. Selby, and George M. Callihan, Ap-
pellees.

Supersedeas Bond.

Know all men by these presents:

That the Oklahoma Natural Gas Company, a corporation organized under the laws of the State of Oklahoma, obligor, and the United States Fidelity & Guaranty Company, a corporation organized under the laws of Maryland and duly qualified to transact business in the State of Oklahoma, as surety, are held and firmly bound unto the above named appellees and unto the State of Oklahoma for the use and benefit of whom it may concern in the sum of Thirty-five Thousand (\$35,000.00) Dollars, for the payment of which well and truly to be made we and each of us do hereby jointly and severally bind ourselves, our successors and assigns.

Dated this 12th day of April, 1920.

The condition of the foregoing obligation is such that

Whereas, on the 23 day of February, 1918, the Corporation Commission of the State of Oklahoma made and entered its order No. 1379, requiring the Oklahoma Gas & Electric Company and the
14 Oklahoma Natural Gas Company, defendants, to make certain discounts and rebates specified in said order upon the bills of its consumers of gas in the City of Oklahoma City during the month of December, 1917, and the month of January, 1918, and,

Whereas, the Oklahoma Natural Gas Company, principal obligor, did appeal to the Supreme Court of the State of Oklahoma from said order; and

Whereas, said Supreme Court of Oklahoma, on January 20, 1920, rendered a decision and judgment in said cause affirming said order of said Corporation Commission, and on March 30, 1920, denied a petition for rehearing therein; and

Whereas, the said obligor, Oklahoma Natural Gas Company, has applied for a writ of error to the Supreme Court of the United States in said cause, and pending the prosecution of said writ of error the said order of the Corporation Commission and the judgment of the Supreme Court of Oklahoma affirming the same has been suspended and superseded:

Now, therefore, if the said principal obligor shall prosecute its writ of error with due diligence and to good effect, and shall pay all damages and costs, rebates and discounts, if it fails to make its plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

OKLAHOMA NATURAL GAS COMPANY,

By R. C. SHARP,

Vice President.

UNITED STATES FIDELITY &
GUARANTY CO.,

By ED M. SEMANS,

Its Duly Authorized Agent

and Attorney in Fact. [SEAL.]

The above bond is hereby approved on this the 14th day of April, 1920.

THOS. H. OWEN,

Chief Justice of the Supreme Court of Oklahoma.

15 Filed in Supreme Court of Oklahoma Apr. 14, 1920.
William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Appellant,

vs.

THE STATE OF OKLAHOMA et al., Appellees.

Præcipe for Transcript.

To the Clerk of the Supreme Court of Oklahoma:

The appellant, Oklahoma Natural Gas Company, having prayed and having obtained a writ of error to the Supreme Court of the United States in the above entitled cause, hereby requests that you prepare a full and complete transcript of the record and of all proceedings in said cause in the Supreme Court of Oklahoma, for transmission to and filing in the Supreme Court of the United States; and the appellant, considering that the entire record in this cause is necessary to a full and complete understanding thereof by the Supreme Court of the United States, requests that no portion of the

record in the Supreme Court of Oklahoma be eliminated, but that all of the same be incorporated in said transcript.

AMES, CHAMBERS, LOWE & RICHARDSON,

Attorneys for Appellant.

16 Before the Corporation Commission of Oklahoma.

9854.

Cause No. 3188.

CHAS. H. RUTH et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL GAS COMPANY, Defendants.

Cause No. 3192.

T. F. DONNELL et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY, Defendant.

Cause No. 3197.

CHAS. B. SELBY, County Attorney, et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL GAS COMPANY, Defendants.

Case-Made.

Chas. H. Ruth et al., Attorneys for Complainants.

C. B. Ames et al., and Paul Reiss, Attorneys for Defendants.

Corporation Commission of Oklahoma. Filed Apr. 3, 1918. J. H. Hyde, Sec'y.

Filed in Supreme Court of Oklahoma Apr. 3, 1918. William M. Franklin, Clerk.

17 Filed in Supreme Court of Oklahoma Apr. 3, 1918. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Plaintiff in Error,

vs.

THE STATE OF OKLAHOMA, CHARLES B. SELBY, County Attorney, and Others, Defendants in Error.

Petition in Error.

Comes now the Oklahoma Natural Gas Company, a corporation, plaintiff in error in the above entitled cause and respectfully shows to the court that on February 23, 1918, Order No. 1379 was made by the Corporation Commission of the State of Oklahoma in these causes then pending before the Commission, being Number 3188, Number 3192 and Number 3197.

That there is hereunto attached under the seal of the Corporation Commission all the facts upon which the action appealed from was based, together with the evidence introduced before and considered by the Commission, duly certified by the Acting Chairman of the Commission as required by law.

The said plaintiff in error respectfully shows unto the Court that there was error committed by the Corporation Commission in the condition of said order in the following particulars, to-wit:

1. Said order, finding and judgment of the Commission is not supported by the evidence in said cause.

2. Said order, finding and judgment of the Commission is contrary to law.

3. Said order, finding and judgment of the Commission takes from the plaintiff in error a commodity, to-wit, natural gas, without compensation and therefore deprives it of its property without due process of law, and in violation of the Fourteenth Amendment of the Constitution of the United States, and in violation of the Constitution of the State of Oklahoma.

4. Said order, finding and judgment of the Commission is one which the Commission has no jurisdiction to make under the Constitution and laws of the state.

Wherefore plaintiff in error prays that the said orders, findings and judgment of the Commission shall be reversed.

AMES, CHAMBERS, LOWE & RICHARDSON,

Attorneys for Plaintiff in Error.

21 Filed in Supreme Court of Oklahoma Apr. 3, 1918. William M. Franklin, Clerk.

Before the Corporation — of Oklahoma.

No. 3188.

CHARLES H. RUTH et al., Complainants.

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL GAS COMPANY, Defendants.

No. 3192.

T. F. DONNELL et al., Complainants.

vs.

OKLAHOMA GAS & ELECTRIC COMPANY, Defendant.

No. 3197.

CHARLES B. SELBY, County Attorney, et al., Complainants.

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL GAS COMPANY, Defendants.

The undersigned W. D. Humphrey, Acting Chairman of the Corporation Commission of the State of Oklahoma does hereby certify under the seal of the Commission that the Oklahoma Natural Gas Company, defendant in the above entitled causes, has taken an appeal from orders No. 1379 and 1380 as made by the Commission therein, and does hereby further certify to the Supreme Court that the papers hereunto attached contain all the facts upon which the action of the Commission appealed from was based, together with the evidence introduced before and considered by the Commission, and that said Order No. 1379 hereinafter set forth contains a written statement of the reasons upon which the order of the Commission appealed from was based.

Given under the hand and the seal of the Commission on this 3d day of April, 1918.

[Seal of Corporation Commission, Oklahoma.]

W. D. HUMPHREY,
Acting Chairman.

Attest:

J. H. HYDE,
Sec'y.

22 Be it remembered, that on the 10th day of December, 1917, Charles H. Ruth, and others, commenced an action before the Corporation Commission of the State of Oklahoma against the Oklahoma Natural Gas Company, and others, by the filing of a complaint which is in words and figures as follows, to-wit:

23 STATE OF OKLAHOMA,
Oklahoma County, ss:

In the Commissioner's Court, Before the Corporation Commission of the State of Oklahoma.

No. 3188.

CHARLES H. RUTH and H. F. TRIPP et al., Relators,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY (a Corporation) & THE
NATURAL GAS COMPANY (a Corporation), Respondents.

Complaint.

Come now the relators, Charles H. Ruth and H. F. Tripp, and on behalf of themselves individually and all other residents of the City of Oklahoma City, State of Oklahoma individually and collectively as a community being users and consumers of natural gas within the said city and affected by the action of the respondents hereinafter complained of, and for their cause of action against the respondents allege and state.

1. That the relators are bona fide residents of the City of Oklahoma City and are users and consumers of natural gas and are dependent upon it for domestic and business purposes, the natural gas furnished by the respondents, Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company and are not indebted to either of the said companies for any commodity furnished by the said companies or either of them.

2. That the Oklahoma Gas and Electric Company, is now and was at all times hereinafter mentioned a public service corporation duly organized, created and existing under and by virtue of the laws of the State of Oklahoma, and as such corporation is now and was at all times hereinafter mentioned the owner of a certain franchise granted by the municipality of Oklahoma City, Oklahoma, for the purpose of supplying and selling said municipality and the inhabitants thereof, with natural gas for light, heat and power purposes, and as such public service corporation exercises the right of eminent domain, for the purpose of transporting and supplying by means of pipe lines Oklahoma City, Oklahoma, and the inhabitants thereof with all the natural gas used by said city and the inhabitants thereof for light, heat and power purposes, and

24

as such public service corporation, owns and possesses a virtual monopoly in the business of supplying Oklahoma City and the inhabitants thereof with natural gas for the purposes aforesaid, and by reason thereof, the relators and the residents of said city must contract with said corporation for all natural gas used by them in the conduct of their individual business, enterprises and institutions and for the purpose of domestic use in their homes, and that by reason of such facts it is the duty of said corporation engaged in the business aforesaid to furnish the City of Oklahoma City and the inhabitants thereof with all the natural gas reasonably necessary and adequate to the needs of the public in said City of Oklahoma City, Oklahoma, for the purposes aforesaid, and the adequate or inadequate supply so furnished or neglected to be furnished by the said respondents affects the community of Oklahoma City at large.

3. That the Natural Gas Company is now and was at all times hereinafter mentioned a corporation duly organized, created and existing under and by virtue of the laws of the State of Oklahoma for the purpose of transporting by means of pipe lines in the State of Oklahoma natural gas and for such purposes possesses the right

25 of eminent domain and is engaged in the transportation of natural gas by way or means of pipe lines from Cushing,

Oklahoma, to Oklahoma City, Oklahoma, and is under contract, the exact terms of which are unknown to your complainants, to deliver said natural gas into the pipe lines owned, operated and controlled by the Oklahoma Gas and Electric Company at and in Oklahoma City, Oklahoma, for the purpose of supplying said City and inhabitants thereof for heat, light and power purposes aforesaid.

4. The relators for themselves and all other users and consumers of natural gas within the City of Oklahoma City are advised and believe and so allege and state that the said respondents and each of them have construed and have intermittently maintained but one main pipe line into the said City for the purpose of supplying natural gas to the relators and other residents of Oklahoma City; and at divers and sundry times, the exact date thereof being to the relators unknown, the said pipe line has become broken and out of repair, and a reasonably adequate supply of natural gas has been denied to these relators and all other persons of Oklahoma City, and has been completely shut off and ceased to flow through the pipe of the respondent corporations.

5. That at divers and sundry times within the last three years the quantity or volume of gas supplied by the respondents has been wholly inadequate to supply the needs of the relators and the other residents of Oklahoma City, Oklahoma, the exact times, days and dates of such inadequate supply are to the relators unknown, except — hereinafter set forth.

6. That on the 7th, 8th, 9th and 10th days of December, 1917, the said respondents, Oklahoma Gas and Electric Company, has

wholly failed, refused and neglected to supply the relators with a reasonable and adequate supply of gas for heat, light and power purposes, and the community of Oklahoma City at large was affected thereby, and such failure of the respondent to furnish a reasonably adequate supply of natural gas to the relators and community at large, occasioned and caused great suffering, hardships and distress and actual loss to these relators and the citizens of Oklahoma City at large.

7. These relators are advised and so believe and so allege and state that the said respondents, Oklahoma Gas and Electric Company nor neither of them have or maintained any reserved supply to meet ordinary conditions arising in the winter months or to supply and gas in the event of a break in the main line, supplying the said community; and the relators are further advised and believe and so allege and state that it is wholly practical to maintain tanks and reservoirs for storage of natural gas in such quantities as will reasonably supply the needs of the citizens of Oklahoma City.

Premises considered, your relators therefore pray that the Oklahoma Natural Gas Company be required to produce its books, papers, bills and accounts before this Commission and to discover to this Commission the amount or volume of natural gas furnished daily since the 1st day of January, 1916, to date to the Oklahoma Gas and Electric Company for the purpose of supplying these relators and the community of Oklahoma City at large, and to discover to this Commission the legal connection if any existing between the said respondents, and the contracts made and entered into between them with reference to the supply of natural gas to be supplied to the residents of Oklahoma City, Oklahoma.

2nd. That the Oklahoma Gas and Electric Company be required to produce before this Commission its books, papers, bills and accounts showing the daily consumption of gas by the residents of Oklahoma City, Oklahoma, and to discover to this Commission the volume or quantity of natural gas adequate to supply the reasonable needs of the relators and the community of Oklahoma City at large during the months of December, January, February and March of each year.

3rd. That the said Oklahoma Gas and Electric Company be required to produce before this Commission its books, papers, and reports, and to discover to this Commission the per pound or ounce pressure necessary to be maintained in their mains, laterals or supply pipes, to furnish a reasonably adequate volume of gas to the relators and all other users or consumers of natural gas within the community of Oklahoma City, Oklahoma, at large.

4th. That this Commission order and direct the said respondent, Oklahoma Gas & Electric Company to make immediate provision for the raising to and maintaining at the necessary and proper pres-

sure, sufficient natural gas to supply the adequate needs of the relators and the community of Oklahoma City, Oklahoma, at large.

5th. That this Commission order and direct the respondent, Oklahoma Gas & Electric Company to immediately erect, construct or build suitable tanks, reservoirs or receptacles of sufficient size and dimensions to hold and contain a reserve supply of natural gas to adequately supply the needs of the relators and the community of Oklahoma City at large, and that this court further order and direct the said respondent, Oklahoma Gas & Electric Company to maintain said tanks, reservoirs or receptacles full with natural gas to their capacity as a reserve supply against the contingency of a break in the main pipe line of the said company and against the usual requirements made necessary by the weather conditions during the winter months of each year, and your respondents will ever pray, etc.

(Sgd.)

CHARLES H. RUTH,
H. F. TRIPP,
Relators.

28 Charles H. Ruth and Harry F. Tripp each being duly sworn according to law, upon oath, each for himself says, that he has read the within and foregoing complaint by them filed and that the matters therein stated are true.

CHARLES H. RUTH,
H. F. TRIPP,

Subscribed and sworn to before me this 10th day of December, 1917.

[SEAL.]

BEATRICE GIVAN,
Notary Public.

Endorsed: No. 3188. In the Commissioners' Court before the Corporation Commission of the State of Oklahoma. Chas. H. Ruth and H. F. Tripp, et al., Relators, vs. Oklahoma Gas & Electric Co. (a corporation) and The Natural Gas Company (a corporation). Respondents. Complaint. Filed December 10, 1917.

29 Thereafter, on January 2, 1918, The Oklahoma Natural Gas Company filed its separate answer in said cause, which said answer is in words and figures following, to wit.

30 Before the Corporation Commission of the State of Oklahoma.

No. 3188.

CHARLES H. RUTH et al.

VS.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL
GAS COMPANY.

Separate Answer of Oklahoma Natural Gas Company.

Comes now the Oklahoma Natural Gas Company, one of the defendants in said cause, and for its separate answer to the complaint heretofore filed herein, answering says:

1. That it admits that the complainants are residents of Oklahoma City and users of natural gas, but it denies that they are dependent upon natural gas for domestic and business purposes, but says that they have the same opportunity and the same right as citizens of any city which is not supplied with natural gas, to procure fuel of other kinds, and that their reason for desiring to use natural gas is because it is a cheaper and more convenient fuel.

2. It admits that its co-defendant, Oklahoma Gas & Electric Company, exercises a franchise within the City of Oklahoma City for the purpose of distributing natural gas, and that it owes a duty to said citizens to use reasonable diligence to discharge its functions as a public service corporation, and in this regard it says that it is engaged in the business of supplying natural gas to its co-defendant for distribution in Oklahoma City, and it avers that it has used every reasonable means within its power to supply the needs and requirements of said city, and in this connection it refers to the allegations of its answer filed in the complaint against it and its co-defendant before this Commission by the County Attorney of Oklahoma County, Oklahoma and prays that said allegations may be made a part of this answer.

31 3. It admits that it is engaged in the business of transporting gas by means of pipe lines to Oklahoma City, and that it is under contract with the Oklahoma Gas & Electric Company, and it avers that a copy of this contract is on file with this Commission.

4. With reference to the pipe line construction by this defendant, this defendant respectfully refers to its answer filed to the complaint brought by the County Attorney of Oklahoma County, Oklahoma, and asks that said answer may be referred to as a part of this answer. A copy of said answer is hereunto attached, marked exhibit "A," and referred to as a part of this answer.

5. For its answer to the fifth, sixth and seventh paragraphs of said complaint, it refers to its answer hereunto attached, marked exhibit "A" and made a part of this answer.

6. Further answering this defendant says that its reports to this Commission are on file; that its contract with the Oklahoma Gas & Electric Company is on file with this Commission; and that it has at all times made such reports to this Commission as required by law, or requested by the Commission, and that it has done everything within its power and more than is required by the law at all times to supply the inhabitants of Oklahoma City with gas.

Now, therefore, having fully answered, this defendant prays that the relief sought by the complainants be denied.

(Sgd.)

AMES, CHAMBERS, LOWE &
RICHARDSON,

*Attorneys for Defendant Oklahoma
Natural Gas Company.*

Filed Jan. 2, 1918.

32 Before the Corporation Commission of the State of Oklahoma.

No. —.

In re OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL GAS COMPANY.

Separate Answer of Oklahoma Natural Gas Company.

Comes now the Oklahoma Natural Gas Company, and for its separate answer to the complaint heretofore filed in this cause by the County Attorney of Oklahoma County, Oklahoma, answering, says:

This defendant is engaged in the business of producing, purchasing and transporting natural gas to be sold to the inhabitants of Oklahoma City, and a large number of other towns and cities in the State of Oklahoma. In the prosecution of its business it conveys natural gas to the city limits of Oklahoma City, Oklahoma, where it delivers the same to its codefendant, the Oklahoma Gas & Electric Company, which in turn distributes the same to the inhabitants of Oklahoma City. That it has been engaged in this business for a period of approximately ten years, and during that time it has used every means within its power to deliver at all times an adequate supply of gas for domestic consumption as well as for the use of power plants, not only in Oklahoma City, but in many other towns in the State of Oklahoma. That its co-defendant, The Oklahoma Gas & Electric Company is dependent upon this defendant for the supply of natural gas which it distributes in the city of Oklahoma City, and this defendant at all times has and is now furnishing an adequate supply of gas in Oklahoma City except in rare occasions. It admits that during a few days in the month of December, 1917, its supply of gas has been insufficient to meet all requirements, but in this con-

23 nection it respectfully shows to the Commission that it has furnished all the gas which it has been able to produce or purchase, and not only all the gas which it has been able to produce or purchase in the vicinity of its pipe lines but that it has taken extraordinary precautions to supply an adequate supply of gas for its customers during the present winter. That in so doing it has extended its main trunk line to what is known as the Morrison Field by building at a great expense to it a twelve inch line from a point on its original system near Wellston, Oklahoma, in a northerly direction to the Morrison Field, and that in so doing it has expended approximately the sum of \$800,000. That the Morrison field is about 53 miles distant from its former pipe line system, and this defendant was not bound in law to expend said sum of money, or extend its line to said distant field, but has done so as a business proposition and in order to supply the continually increasing demand of its customers for gas. That during the dates complained of, to-wit, from December 8th to December 13, 1917, both inclusive, this defendant has supplied for use at Oklahoma City approximately 20,000,000 cubic feet per day, or approximately the equivalent in equal units of 1,000 tons of coal per day during said period.

This defendant further says that on December 18, 1917, it completed its pipe line connection with the Morrison field, and that since said time it has an additional supply of gas from said Morrison field of approximately 20,000,000 cubic feet per day, which is the carrying capacity of its pipe line connection with said Morrison field. This defendant believes that at present it has an adequate supply of gas for all domestic consumption in the City of Oklahoma City, and in supplying its consumers it is now and has at all times been giving preference to domestic consumption.

34 This defendant further says that in the nature of things the quantity of gas which it can supply is limited by the amount of gas it can purchase, and by the carrying capacity of its pipe line system.

This defendant further says that its original pipe line connecting Oklahoma City with the gas fields, was a twelve inch line from which was supplied not only Oklahoma City, but Edmond, Guthrie, Shawnee, Chandler, and various other towns along its system. That when said line was constructed it was of ample capacity to supply the people then living in the towns supplied by it, but that the City of Oklahoma City, since its original pipe line was constructed has increased in population from approximately 30,000 to approximately 100,000; that the City of Tulsa which is also supplied by this defendant, during the same period has increased in population from approximately 12,000 to approximately 65,000; that the City of Muskogee, which is likewise supplied by this defendant, has during said time increased in population from approximately 20,000 to 35,000, and that the population in other towns and cities supplied by this defendant has likewise increased. That at the same time the population served by this defendant has been increasing so rapidly the supply of gas available in Oklahoma has been shifting from place to place. That the original fields from which this defendant procured a supply

of gas have been almost exhausted, and that very little of the gas now served to the people along its lines is coming from said fields. That new oil fields have come in from time to time which this defendant has reached by the building of additional pipe lines at great expense, and that said fields have lasted from two to three years. That this defendant extended its pipe line into the Cushing field during the year 1912 at a cost of approximately \$325,000, but that the gas from the Cushing field has been largely depleted.

That the supply of gas from the various fields which it has reached has been exhausted largely by waste and not by use, and that the defendant during the past eight years has been doing everything within its power to bring about the conservation of gas within the State of Oklahoma, and at all times has co-operated with the public officials of the state in seeking to conserve the supply of gas for domestic consumption. That in undertaking to keep pace with the consumers served by this defendant, in addition to extending its lines to new fields, has also built an additional twelve inch line from Oklahoma City alongside its original twelve inch line for a distance of thirty miles to Wellston, thereby doubling its carrying capacity for that distance. That while the price of fuel during said period has — the price of fuel oil advancing from forty cents per barrel to \$1.85 per barrel, the price of natural gas has not been changed in Oklahoma City.

Further answering the specific charges of said complaint this defendant says:

1. It denies that for a long period of time this defendant failed to furnish an adequate supply of gas to meet the demands of Oklahoma City in ordinary severe, winter weather, but on the contrary it avers that during the ten years which it has been supplying gas at Oklahoma City there have been very few days when the supply was not adequate for all domestic consumption.

2. It denies that it has continually represented to the inhabitants of Oklahoma City that there would be an adequate supply of gas, but has at all times merely engaged to furnish said gas as it was able to procure and had advised all consumers to have a supply of coal or other fuel on hand in cases of emergency.

3. It denies that it has been negligent in the construction of its pipe line system, and denies that its lines are laid so near the ground as to be injuriously affected during cold weather. It likewise denies that breaks in its pipe lines have been a frequent occurrence, but on the contrary alleges that during the ten years it has supplied Oklahoma City with gas there have been only two breaks, one of which was caused by a flood of unusual magnitude washing out a part of its pipe line, and the other caused by an unavoidable explosion.

4. It denies that it has utterly failed to provide more than one pipe, and avers that it has doubled back its line from Oklahoma City to Wellston, and has built new lines into various gas fields for the purpose of procuring an adequate supply of gas.

It admits that it has not provided storage facilities for the storage of gas other than its pipe line system, and in this connection it avers that the cost of building storage facilities is so great as to be prohibited, and that in the prosecution of the natural gas business storage facilities are not usual or customary, and in fact are practically unknown. It likewise denies that the stockholders are practically the same as the stockholders of the Oklahoma Gas & Electric Company, but on the contrary avers that its stockholders are entirely separate and distinct from the Oklahoma Gas & Electric Company, and that there is no common ownership or common management of the two defendants.

5. It admits that the Oklahoma Gas & Electric Company, its co-defendant, has a franchise for the distribution of gas in Oklahoma City, but it denies that the population of Oklahoma City has a right to depend entirely for fuel upon these defendants, and avers that the reason the people wish to use gas is because it is a cheaper and more convenient fuel than any other, and not because other fuel is not available, but on the contrary it alleges that before it constructed its pipe line system, the people of Oklahoma City were entirely without natural gas, and that they have now just the same opportunity of procuring other fuel as they would have if there were no natural gas to be supplied.

37 6. It denies the averment of the sixth paragraph of said complaint.

7. It denies the averments of the seventh paragraph of said complaint.

8. It denies that it or its co-defendant has at any time withheld any available gas from the City of Oklahoma City and refers to the allegations of this answer hereinbefore set forth showing the efforts it has made at all times to furnish an adequate supply of gas.

Wherefore, having fully answered said complaint, this defendant prays that it be discharged.

Attorneys for Defendant.

Exhibit "A."

28 Thereafter, on January 9, 1918, the Oklahoma Gas &
Electric Company filed their separate answer in Cause No.
3188, which said answer is in words and figures following to-wit:

39 Before the Corporation Commission of the State of Oklahoma.

Cause No. 3188.

CHARLES H. RUTH et al.

vs.

OKLAHOMA GAS & ELECTRIC CO. and OKLAHOMA NATURAL GAS CO.

Separate Answer of Oklahoma Gas & Electric Company.

The Oklahoma Gas & Electric Company, one of the defendants in said cause, herewith files its separate answer to the above complaint, and answering, says:

First, that it admits that Charles H. Ruth and F. H. Tripp, who signed the complaint, are residents of Oklahoma City and are users and consumers of natural gas, but it denies that the said complainants are dependent upon natural gas for domestic and business purposes, but says that they have the same opportunity and the same right as citizens of any city which is not supplied with natural gas, to procure fuel of other kinds, and that their reason for desiring to use natural gas is because it is a cheaper and more convenient fuel.

(1) Defendant denies that all of the names made a part of this petition as complainants, by amendment, are residents of Oklahoma City, or users of natural gas.

Second. This defendant admits that it is now, and was at all times mentioned in this complaint, a public service corporation, duly organized and existing under the laws of the State of Oklahoma, and as such corporation is now and at all times mentioned in said complaint, the owner of a certain franchise granted by the municipality of Oklahoma City for the purpose of supplying and
40 selling to said municipality and the inhabitants thereof, natural gas for light, heat and power purposes, but denies that as such public service corporation it exercises the right of eminent domain for the purpose of transporting and supplying by means of pipe lines Oklahoma City, Oklahoma, and the inhabitants thereof with all of the natural gas used by the said city and inhabitants thereof for light, heat and power purposes, and denies that as public service corporation it owns and possesses a monopoly in the business of supplying Oklahoma City and the inhabitants thereof with natural gas for the purposes aforesaid, and denies each and every other allegation contained in the second paragraph of said complaint.

Third. This defendant admits that its co-defendant, the Oklahoma Natural Gas Company, is engaged in the business of transporting gas by means of pipe lines to Oklahoma City, and admits that the said Oklahoma Natural Gas Company is under contract with

the Oklahoma Gas & Electric Company, and avers that a copy of this contract is on file with this Commission.

Fourth. This defendant, in answering paragraph four of complainants' petition, states that the co-defendant, the Oklahoma Natural Gas Company, maintains two main lines into the City of Oklahoma City, one of them reaching the Morrison field in north central Oklahoma, and the other extending into the gas fields of northeastern Oklahoma.

Fifth. Answering the fifth paragraph of complainants' petition, this defendant denies each and every allegation therein contained.

Sixth. Answering the sixth paragraph of complainants' petition, this defendant states that on the 7th, 8th, 9th, and 10th of December, 1917, there was a shortage of gas in Oklahoma City, but denies each and every other allegation contained in said paragraph.

41 Seventh. Answering the seventh paragraph of complainants' petition, this defendant states that aside from the reserve which may be created by being connected with numerous wells through the lines of its co-defendant, the Oklahoma Natural Gas Company, this defendant has not maintained any reserve supply, and states that it is not at all practical to maintain tanks and reserves for storage of natural gas in such quantities as will reasonably supply the needs of the citizens of Oklahoma City during a shortage such as occurred on the said 7th, 8th, 9th and 10th of December, 1917.

This defendant states that while the storage of natural gas from a physical standpoint is practical, from a business standpoint such a storage capacity is entirely impractical. This defendant further states that to supply a storage capacity sufficient to take care of a shortage such as existed on the days mentioned would call for not less than seven 15,000,000 cubic feet holders, which would cost, exclusive of real estate on which to place such holders, not less than \$10,500,000.00, and that the depreciation and interest on this investment alone, not to say anything of operating costs nor return upon the investment made, would equal the sum of \$1,260,000.00 per year, or not less than \$300,000.00 more than the total sum received by this defendant and its co-defendant from the sale of gas in Oklahoma City.

This defendant further states that for the year 1916 there was sold in Oklahoma City, \$926,000.00 of natural gas, and that of this sum this defendant received less than \$300,000.00 as its share under the contract existing between it and its co-defendant, the Oklahoma Natural Gas Company, and that if storage capacity adequate to take care of the shortage of natural gas during the period covered
42 by the complaint herein were ordered in at the expense of the defendant, it would be subjected to a loss of not less than \$900,000.00 per year, and if such storage capacity were ordered in at the expense of this defendant and its co-defendant, the said defendants would be subjected to an outlay of at least \$300,000.00 per year

more than they would receive from the sale of natural gas in Oklahoma City.

Wherefore, having fully answered, this defendant prays that the relief sought by the complainants be denied.

(Signed)

PAUL REISS,

Attorney for Oklahoma Gas & Electric Co.

Copy served January 8, 1918.

RUTH & TRIPP,

By C. H. RUTH.

Endorsed: 3188. Before the Corporation Commission of Oklahoma. Chas. H. Ruth et al., Complainants, vs. Oklahoma Gas & Electric Company, Defendants. Separate Answer of Oklahoma Gas & Electric Company. Filed Jan. 9, 1918.

43 Thereafter, on the — day of —, 19—, Complainants filed their reply to the separate answer of the Oklahoma Gas & Electric Company, which is in words and figures following, to-wit:

44 Before the Corporation Commission of the State of Oklahoma.

No. 3188.

CHAS. H. RUTH et al.

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL GAS COMPANY.

Complainants' Reply to Separate Answer of Oklahoma Gas and Electric Company.

Come now the complainants and for their reply to the separate answer to the respondent, Oklahoma Gas & Electric Company, state:

1. That the first lettered paragraph of the said respondent does not set up facts sufficient to constitute a defense to this complaint; that the same is frivolous; based on assumption and opinion, and should be stricken from the record.

2. Replying to the first figured paragraph of the said respondent's answer, complainants state that these complainants are not advised that all the names appearing on the said petition or complaint are bona fide residents of Oklahoma City and users of natural gas; that the said petitions were placed on street corners and given to divers and sundry persons to circulate, and these complainants did not read the names on the said petitions or investigate, personally, the fact as to whether the said signers used natural gas or not, but these complainants allege and state that there are eleven (11) Jack Johnsons resident of Oklahoma City, 8 white and 3 colored; two (2) T. Rose

velts; two (2) Billie Burkes, and two (2) Woodrow Wilsons, and all living within the zone furnished with natural gas by the answering —

45 3. These complainants deny each and every material allegation contained in paragraph four (4) of the respondents' answer.

4. These complainants deny that not less than seven gas holders of 15,000,000 feet capacity each would be necessary to maintain an adequate reserve supply of gas, but these complainants allege that five (5) gas holders of a capacity of 10,000,000 feet each would be sufficient; and complainants further deny that a gas holder of 15,000,000 feet capacity would cost the sum of \$1,500,000. One Million five hundred thousand dollars.

Wherefore, complainants pray that the said respondent, Oklahoma Gas & Electric Company be ordered and required by this commission to immediately erect and construct or cause to be erected and constructed not less than five gas holders of 10,000,000 feet capacity each for a reserve supply for the users of natural gas in Oklahoma City, and for such other and general relief as to this Commission may seem just and reasonable.

(Sgd.)

C. H. RUTH &

H. F. TRIPP,

Complainants, and Attorneys for all Complainants.

Endorsed: 3188. Corporation Commission of the State of Oklahoma. Chas. H. Ruth, et als., Complainants, vs. Oklahoma Gas & Electric Co. and Oklahoma Natural Gas Company, respondents. Reply to Separate Answer of the Oklahoma Gas & Electric Co. Filed on the — of —, 19—.

46 Thereafter, on the — day of —, 19—, Complainants in said causes filed their supplemental complaint which is in words and figures following to wit:

47 Before the Honorable Corporation Commission of the State of Oklahoma.

In re CONSOLIDATED COMPLAINTS AGAINST THE OKLAHOMA GAS & ELECTRIC COMPANY AND THE OKLAHOMA NATURAL GAS COMPANY.

Supplemental Complaint.

Comes now the complainants in the foregoing consolidated complaints against the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company, for shortage of gas in Oklahoma City, and files this additional and supplemental complaint.

Complainants allege that since the date of the filing of the original complaints in this proceeding, and specifically on the dates including the 10th to the 16th days of January, 1918, the said defendant corporations, the Oklahoma Gas & Electric Company and the

Oklahoma Natural Gas Company, have been guilty of contempt of this Honorable Commission, and are now guilty of contempt in this, to wit:

That during said time and at the present time the said defendants have been guilty of the violation of the order of this Honorable Commission, Number 1028, requiring the Gas Companies to furnish an adequate supply of gas for domestic consumption; that during said time the defendant corporations, and each of them, were engaged in the business of supplying natural gas to the inhabitants of the City of Oklahoma City for pay and that during all of said period of time, aforesaid, the defendant corporations have utterly failed to furnish an adequate supply of gas for domestic use of the
48 citizens of Oklahoma City, in violation of said order of this Commission and in violation of their charter and franchise, and the duty owed to the public and their customers.

Complainants more specifically allege that during the period aforesaid that no portion of the City of Oklahoma City received an adequate supply of gas, and that in large portions of the City there were times in which there was not a sufficient quantity of gas furnished to enable the maintenance of fires. That regardless of the Morrison myth that there is not now being furnished to the citizens of Oklahoma City an adequate supply for domestic use and that neither of said corporations have now adequate facilities for the furnishing to the inhabitants of Oklahoma City an adequate supply of gas in moderately extreme winter weather.

Complainants further allege that during the times hereinbefore mentioned the weather while cold was not unusually cold and that the temperatures were not below the temperatures which could be reasonably expected in this climate at this time of year. That by reason of the breach of duty and violation of law aforesaid there has been great suffering, inconvenience and damage to the citizens of Oklahoma City.

That there has been during the times aforesaid and is now a great shortage of coal, wood and other fuels, and of stoves and other heating devices for the use of fuel other than gas in Oklahoma City, and that said condition has been brought about very largely by the knowingly false representations of the defendant corporations and officers thereof that there would be no shortage of gas in Oklahoma City during the winter of 1917-18, and especially that there would be an adequate supply of gas after the completions of the mains to the Morrison field.

49 Complainants allege and events show, that the tapping of the Morrison field still leaves the defendant corporation without an adequate supply of gas for the people of Oklahoma City, and allege that the said defendant corporations have at all times known, or would have known with the exercise of any care, that they did not have an adequate supply of gas.

Complainants further allege that the said defendants have deposits from their customers in Oklahoma City for gas, and have rules authorizing the shutting off of gas if monthly bills are not paid, and have a rule requiring the payment of \$1.00 for establish-

ing a re-connection when gas is shut off. Complainant- allege that these rules considered in connection with the deposits held by said companies are unreasonable and void.

Complainants further allege that the said defendant corporations well knowing that the meter readings are false and untrue and that the supply of gas which the meters indicate *have* been furnished to the various customers of said company has not been in fact furnished, are now, and have been at the time of the filing of the original complaints before this Honorable Commission, threatening to cut off service of all persons who do not promptly pay their bills and by means of said threats have been wrongfully extorting large sums of money from their customers in Oklahoma City. That said defendant corporations have been cutting off the service of their customers for the refusal to pay extortionate and unearned bills and will continue to so cut off the service to their said customers until precluded by the order of this Honorable Commission.

Complainants further allege that practically all of the consumers of natural gas in the City of Oklahoma City have legal and legitimate defenses against the bills rendered by the said defendant corporations for natural gas and that when said claims are presented to the officers of the Oklahoma Gas & Electric Company, which Company is purporting to act as agent for the Oklahoma Natural Gas Company, the persons presenting said claims are treated with the utmost insolence and contempt, are advised to lay coal, are informed that the said corporations have nothing to do with said claims, and are informed that the service of said customers will be cut off if the gas bills are not paid regardless of any question of counter claim or legal set-off.

Complainants further allege that unless relief is furnished the said corporations will absolutely refuse to hear or even consider any legitimate claims which may exist against said corporations or either of them and that the gas supply of said customers will be ruthlessly cut off regardless of any contention of right, charity or humanity.

Wherefore your complainants ask that the said corporations and both of the be adjudged guilty of contempt for the further violation of the order of this Commission committed during the time hereinbefore mentioned and that this Honorable Commission, in the exercise of its jurisdiction over said corporations, enjoin and restrain the said defendant corporations from cutting off the service of the various customers of said corporations who claim off-sets or defense against bills rendered for gas services.

Complainants further allege that there is no adequate remedy at law, and further pray that this Honorable Commission issue a temporary restraining order, restraining the said defendant corporations, their employes and agents from the cutting off of service to customers claiming defences against bills rendered, until the final

hearing of this complaint, and complainants further pray that on final hearing that the said rules — corporations be held to be unreasonable and void, and that this Honorable Commission issue an order prohibiting said corporations or either of them or their agents or employes from cutting off the service of any

customer who claims counter-claim or defense against a bill rendered to the end that such disputes may be determined in due and regular course in the courts which have been designated in the State of Oklahoma for the determination of disputed questions of private right.

Attorneys for Complainants.

Endorsed: 3188. Before the Honorable Corporation Commission of the State of Oklahoma. In re Consolidated complaints against the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company. Supplemental Complaint. Filed on the — day of —, 19—.

52 Be it remembered, that on the 12th day of December, 1917, T. F. Donnell, and others, commenced an action against The Oklahoma Gas & Electric Company by the filing of a complaint which is in words and figures as follows, to-wit:

53 To the Honorable Corporation Commission of the State of Oklahoma:

I, the undersigned, a resident, citizen and tax payer of Oklahoma City, county and state, and a patron of the Oklahoma Gas & Electric Company, and a consumer of gas for domestic purposes, for myself and for and on behalf of all other citizens and tax payers and consumers of gas in Oklahoma City, County and State, from the Oklahoma Gas & Electric Company, do hereby represent to this *to this* Commission that covering the period of December 8th, 9th, 10th, and 11th, 1917, the temperature in Oklahoma City averaged below freezing; that continuously during said period of time the said Oklahoma Gas & Electric Company wholly failed to furnish to myself and the remainder of the consumers of gas in Oklahoma City, gas in sufficient quantities to meet domestic purposes and wholly insufficient to enable the resident, to remain in their homes without extreme suffering occasioned by the cold weather, and said persons have been at all of said times without gas to prepare meals for their family and to prevent the freezing of water pipes and tanks.

That as a result of the said failure of said Gas Company to provide gas, members of the family of this complainant and of hundreds of other families in Oklahoma City contracted severe colds by reason of not being provided with gas to heat the houses and many of said persons have contracted pneumonia, bronchitis and severe colds and have in other ways had their health impaired by reason of said conditions; that in addition thereto great numbers of families were required to purchase stoves and fuel for the purpose of warming their houses and of preparing their meals, and in many instances being unable to procure stoves and fuel have been

54 compelled to resort to hotels and to live in hotels at great expense and inconvenience to themselves, and in addition have had to employ the services and pay doctor bills and purchase

medicine, to the great damage of such persons, all of whom are patrons of said company.

That in addition many business concerns that have been wholly dependent upon gas have been compelled to suspend their business during the said period of time, many of which are suspended at this time by reason of the failure of the said Oklahoma Gas & Electric Company to furnish gas to be used in their business, all of said business being so suspended at great loss, damage, detriment and inconvenience to the proprietors thereof and to their patrons.

That the undersigned and all patrons of said Gas Company have paid large sums of money in months and years previous, in payment of gas purchased and consumed by each thereof, and have during said period of time depended and relied upon said Company to furnish an adequate supply of gas to meet their needs and necessities, and the said Gas Company has at all times had full knowledge that the undersigned and its patrons generally have depended upon and have relied upon the said company solely to furnish gas for the various uses and needs; that in addition the said Gas Company has at all times during the summer and fall of this year in various ways assured the undersigned and all patrons of said Company and users of Gas in Okla. City that they had arranged and provided for an adequate supply of gas to the consumers for all purposes and under all conditions that might be reasonably contemplated and anticipated, and that the undersigned and all consumers of gas have fully relied upon said assurance and depended upon said company to make good and to fulfill its said assurances.

This complainant would further show that under the rules of the said Oklahoma Gas & Electric Company heretofore promulgated and enforced against the consumers of gas, that said company upon refusal of consumers to pay their gas rentals regardless of the cause therefor have discontinued the gas service from such consumers and have refused to furnish further gas to such persons and that the said company now threatens all consumers of gas who may refuse or decline to pay the approved gas bills and who may have a just and legal defense and good claims thereto, and who have suffered the detriment, damage and inconvenience heretofore mentioned; that such company will immediately, wholly and promptly discontinue the said gas services to persons so declining and refusing to make payment of their gas bills and that unless this Commission makes an order restraining, prohibiting and forbidding said gas company from carrying into execution the said threatened discontinuances of said gas services of all persons so situated, they will surely occasion such persons much suffering and discomforture, and great financial loss and damage.

Wherefore, this complainant, for himself, and on behalf of all other of said patrons of the said gas company and consumers of gas, respectfully asks this commission to set a day for hearing this cause and that notice be given said Gas & Electric Company of such hearing, and that during the pendency of the hearing herein, this Commission make an order restraining the said Oklahoma Gas & Electric Company from in any manner cutting off, impairing or discontinu-

ing the said gas service to this complainant and all other patrons of the said Gas & Electric Company, and consumers of gas, who may have a just and legal defense or counter claim to the claim of such Gas Company against such persons; and that upon a further hear-

56 ing herein the said order may be made permanent until such persons and the said Gas Company may adjust their difficulty or their legal rights be determined in a court of competent jurisdiction, and for such other, further and proper relief as may be warranted, and that in addition such penalty be enjoined upon, and against said Gas Company as under the law and facts in this case may be warranted, and for such other and general relief as the Commission may deem proper.

(Sgd.)

T. F. DONNELL,

A. T. BOYS,

Assistant Municipal Counsellor,

CHARLES SELBY,

County Attorney,

PORTER H. MORGAN,

Assistant County Attorney,

Endorsed: To the Honorable Corporation Commission of the State of Oklahoma. In re Gas & Electric Company. Complaint. Filed December 12, 1917.

57 Thereafter, and on January 9, 1918, the Oklahoma Gas & Electric Company filed its answer in cause No. 3192, which said answer is in words and figures, following to-wit:

58 Before the Corporation Commission of the State of Oklahoma.

Cause No. 3192.

T. F. DONNELL, Complainant,

vs.

THE OKLAHOMA GAS & ELECTRIC COMPANY, Defendant.

Answer,

The defendant, the Oklahoma Gas & Electric Company, answering the above complaint, admits that the complainant is a resident, citizen and tax-payer of Oklahoma City, County and State, and a patron of the Oklahoma Gas & Electric Company, and a consumer of gas for domestic purposes.

The defendant states that it is a corporation, organized and operating under the laws of the State of Oklahoma, and among other activities is engaged in distributing natural gas in the City of Oklahoma City as agent for the Oklahoma Natural Gas Company, which last named company is likewise a corporation existing and operating under the laws of the State of Oklahoma.

The defendant further states that it is the owner of a franchise from the City of Oklahoma City, permitting it to distribute in said City natural gas to the said City and the citizens thereof.

The defendant further states that aside from the contract existing between it and the Oklahoma Natural Gas Company, there is no relationship between it and the Oklahoma Natural Gas Company, and states that there are no common stockholders, directors or officers as between this defendant and the said Oklahoma Natural Gas Company.

The defendant admits that covering the period of December 8th, 9th, 10th and 11th, 1917, the temperature in Oklahoma City averaged below freezing, and that under the extreme weather conditions which did prevail in Oklahoma City during the said period mentioned, there was a gas shortage, and admits that there were instances when said shortage did cause suffering, but denies that during said period of time the said Oklahoma Gas & Electric Company wholly failed to furnish the complainant and the remainder of consumers of gas in Oklahoma City, gas in sufficient quantities to meet domestic purposes, and wholly insufficient to enable the residents to remain in their homes without extreme suffering occasioned by the cold weather, and denied that said persons, including said complainant, have been at all of said times without gas to prepare meals for their families and to prevent the freezing of water pipes and tanks, and the defendant generally denies each and every other allegation in said complaint set forth.

The defendant states that under the rules and regulations heretofore promulgated by it and filed with and approved by the Corporation Commission, and the contract signed by its patrons, including the complainant herein, it has the legal right to discontinue service for non-payment of bills rendered for gas furnished by it, but denied that it has heretofore enforced said right in any case which was not justified "regardless of the cause therefor" as is alleged in said complaint.

Wherefore, having fully answered, this defendant prays that the relief sought by the complainant be denied.

(Sgd.)

PAUL REISS,

Attorney for Oklahoma Gas & Electric Company.

Copy served Jan'y 8, 1918.

T. F. DONNELL.

Endorsed: 3192. Before the Corporation Commission of Oklahoma. T. F. Donnell, Complainant, vs. Oklahoma Gas & Electric Co., Defendant. Answer. Filed Jan. 9, 1918.

Be it remembered, that on the 14th day of December, 1917, Charles B. Selby, et al., commenced an action against the Oklahoma Natural Gas Company, et al., by the filing of a complaint which is in words and figures as follows, to wit:

62 Before the Corporation Commission of the State of Oklahoma

IN RE OKLAHOMA GAS & ELECTRIC COMPANY AND OKLAHOMA
NATURAL GAS COMPANY.

To the Honorable Commission:

The undersigned complainants of the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company would suggest to this Honorable Commission that said corporations are both guilty of contempt of this Honorable Commission in the violation of order number 1028, reported in the reports of this Commission of 1915-16 at page 444, which order in terms applies to all public service gas companies in the State and which requires such companies "to construct and equip and maintain its pipe lines and mains and distributing systems as to be able at all times to furnish an adequate supply of gas for domestic consumption and is hereby ordered to furnish and supply at all times an adequate amount of the proper quality for heating, cooking and lighting for domestic consumption."

Your complainants represent that the said corporations have utterly, wilfully and negligently failed in all respects to comply with said order in that said corporations have utterly, wilfully and negligently failed to supply to the City of Oklahoma City and the inhabitants thereof, an adequate supply of gas as required by said order, and particularly have they neglected to furnish said adequate supply to said City and the inhabitants thereof for the period of

63 December 8th, 9th, 10th, 11th, 12th and 13th, 1917, and that by reason of said failure the inhabitants of the City of Oklahoma City have suffered great inconvenience and injuries and that said violation of the said order of this Honorable Commission by said corporations, the health of the people of the city has been endangered, business has been interrupted and that unless this Honorable Commission takes prompt and drastic action great and lasting injury will result.

That at least one death may be directly attributed to the negligence and wilful failure of the said corporations to comply with the said order of this Honorable Commission, and that numerous fatalities may be expected from a continuance of the conditions now existing.

Your complainants hereby complaining on behalf of the entire population of the City of Oklahoma City, allege the following facts

1st. That for a long period of years the said corporations have failed to furnish an adequate supply of gas to meet the demands of the City of Oklahoma City at times of ordinary severe winter weather

2d. That said corporations have continuously and repeatedly represented to the inhabitants of the City of Oklahoma City that in the future there would be an adequate supply of gas, thus lulling the people into a feeling of security and preventing the said people from making other provisions against ordinary winter weather.

3d. That the said corporations have been wilfully negligent in their construction of the plant in that their pipe lines have been negligently laid so near the surface of the ground as to be subject to the weather conditions and as a result there is a continued menace of the breaking of pipes whenever the temperature falls to the point which may usually be expected in this climate and that in the past breaks of this character have been a frequent occurrence.

4th. That the said corporations have utterly failed to provide more than one pipe line by which gas is brought into the city and it of a sufficient size to meet the demands of usually severe winter weather in this climate and have utterly failed to provide any storage facilities for the storing of gas or any other facilities for meeting the usual demands incident to ordinary severe winter conditions in this climate although at all times knowing that their facilities are inadequate to supply gas as required by the above mentioned order.

On information and belief complainants state that the two corporations above named have practically the same stockholders in so far at least as the controlling stock is concerned and that each of said corporations is dominated and controlled by identical stockholders. That more than fifty per cent of each of the corporations is owned by a certain foreign corporation.

5th. That the Oklahoma Gas & Electric Company now has, and for many years has held a franchise from Oklahoma City for the furnishing and supplying of gas to the City for domestic purposes in residences, and heat and fuel purposes in the various business industries in Oklahoma City, and that said corporation under its said franchise has, during all of said period of time, and now has its various pipe lines, laterals and connection with practically every building in Oklahoma City; that the population of Oklahoma City have depended almost exclusively during the past several years upon the said Oklahoma Gas & Electric Company to supply and provide gas through its mains, laterals and connections to them for their various uses, and have equipped their places of residence and their places of business with gas heating devices in reliance upon repeated assurances made by the said corporations that it would at all times furnish and provide adequate and ample quantities of gas for such uses and purposes; that in addition the population of Oklahoma City has depended upon the said corporation supplying and providing gas for said purposes by reason of the duty enjoined upon said corporation by the laws of the State of Oklahoma, and particularly the orders promulgated by this Honorable Commission with reference thereto by authority of law, and that as a result thereof coal dealers and hardware men have not, and could not maintain supplies to take the place of gas for such purposes.

6th. This Honorable Commission is further shown that under the Charter of the said corporation, Oklahoma Gas & Electric Company, and its franchise aforesaid, with Oklahoma City, and under the laws of the State of Oklahoma, and the rulings, regulations and orders

of this Honorable Commission, that the said corporation owes a public duty to the population of Oklahoma City, practically all of whom are its patrons, and have been its patrons as consumers of gas for several years past. Its duty so enjoined consists, as specified by the order of this Commission in being "able at all times to furnish an adequate supply of gas for domestic consumption and supply at all times an adequate amount of the proper quality for heating, cooking and lighting for domestic consumption" as well as for the purpose of furnishing fuel for business industries.

That by reason of the franchise so conferred by the said municipality upon said corporation as aforesaid, the patrons, which comprise practically the entire population of said City have become entitled to adequate and efficient service in the furnishing of gas to them by the said corporation.

66 That by reason of the failure of said corporation as aforesaid to furnish or provide adequate gas supply to the said patrons of the said corporation, that the health of hundreds of persons has been seriously impaired and many thereof have become sick and bed-ridden with severe colds, pneumonia, pleurisy and other ailments directly due to cold houses, and thousands of families of Oklahoma City have been compelled to furnish stoves and coal and other equipment to reduce their suffering occasioned by the said default of said corporation.

7th. That under the powers conferred upon this Honorable Commission by the Constitution and laws of the State of Oklahoma and acting in pursuance thereof, this Commission is clothed with authority and power to take full charge, control and management of the said corporations in the way of carrying out and performing the obligations, both expressed and implied under the charter and franchise possessed by them as heretofore mentioned, and to place the said corporations in the management of suitable and proper persons to the end that the rights of the people may be subserved, and the health and the lives of citizens, patrons of said corporation in said City may be protected as against the results of the failure of said corporation to perform its duty under the laws of this state; that by reason of the default and failure of the said corporation aforesaid, as herein complained of, and by reason of the order of this Commission heretofore mentioned, the said corporations are in contempt of the said order.

8th. That the said corporations, as complainants are informed and believe, and therefore allege, have at this time no arrangements whereby they may immediately afford to the said citizens of said municipality any particular service, and that by reason of the cold weather and the approaching winter which may reasonably be anticipated to bring an extreme and lower temperature at any
67 date, it becomes necessary that this Honorable Commission immediately make such order as may be proper and necessary for the taking charge and control and management of the business of said corporations; that each of the subscribers hereto are citizens and residents of Oklahoma City, and patrons of said corpo-

rations and consumers of its gas, and make this application for themselves and on behalf of all citizens and persons similarly situated.

Wherefore, your complainants pray this Honorable Commission that the said corporations and each of them be adjudged to be in contempt of this Commission and that they be dealt with as the facts justify, and your complainants further allege and state that the conditions that now exist in the City of Oklahoma City is not due to any lack or shortage of the supply of gas. That an ample supply of gas is available and that ample facilities could be provided and that the present situation in the City of Oklahoma City is either due to incompetency in the management of the said corporations and each of them, or is due to the unspeakable greed which is willing to permit public suffering and death in order to make an unjust profit; that each of said corporations is a solvent, going concern, with ample resources to provide for the necessary facilities.

Therefore, calling attention of this Honorable Commission to Session Laws of 1913, Chapter 93, which gives this Honorable Commission "general supervision of all public utilities with power to fix and establish rates and to prescribe rules, requirements and regulations affecting their service operations and the management and conduct of their business," and giving this Honorable Commission further and complete visatorial and inquisitorial power; that this Honorable Commission may proceed to take such steps as may be
68 necessary to alleviate the present situation and prevent the occurrence of any similar condition, and that to the end that the public may be afforded the services necessary to its health and safety, and that this Commission proceed in exercising its powers to take control of said corporations by the appointment of suitable and capable managers, in order that the safety and life of the inhabitants of the City of Oklahoma City may be assured and protected.

Complainants further pray in view of the public exigency and danger which requires immediate action, that the said corporations may be cited immediately to appear and show cause why the relief prayed for in this complaint should not be granted and why they should not be punished for contempt, and particularly why this Commission would not forthwith make an order taking into its control and management the affairs of said corporations, by appointing suitable persons as managers therefor, under proper orders of this Commission, and to then and there make such discoveries as to the facts in their possession concerning the resources of the two corporations, their facilities, intentions, etc., as may be necessary for the protection of the public, in order that this Commission may render full, complete and adequate relief from the perilous public situation now existing by reason of the default of said corporations and their failure to obey the order of this Honorable Commission.

(Sgd.)

CHAS. B. SELBY,

County Attorney, Oklahoma County.

H. M. GREEN,

Assistant County Attorney, Oklahoma County.

PORTER H. MORGAN,

Assistant County Attorney, Oklahoma County.

Endorsed: No. 3197. Before The Corporation Commission of the State of Oklahoma. In re Oklahoma Gas & Electric Company and Oklahoma Natural Gas Company. Complaint. Filed Dec. 14, 1917.

69 Thereafter, on the 2d day of January, 1918, the Oklahoma Natural Gas Company filed its separate answer in cause No. 1397, which answer is in words and figures following, to-wit:

70 Before the Corporation Commission of the State of Oklahoma.

No. 3197.

In re OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL GAS COMPANY.

Separate Answer of Oklahoma Natural Gas Company.

Comes now the Oklahoma Natural Gas Company, and for its separate answer to the complaint heretofore filed in this cause by the County Attorney of Oklahoma County, Oklahoma, answering says:

This defendant is engaged in the business of producing, purchasing and transporting natural gas to be sold to the inhabitants of Oklahoma City, and a large number of other towns and cities in the State of Oklahoma. In the prosecution of its business it conveys natural gas to the city limits of Oklahoma City, Oklahoma, where it delivers the same to its co-defendant, the Oklahoma Gas & Electric Company, which in turn distributes the same to the inhabitants of Oklahoma City. That it has been engaged in this business for a period of approximately ten years, and during that time it has used every means within its power to deliver at all times an adequate supply of gas for domestic consumption as well as for use for power plants, not only in Oklahoma City, but in many other towns of the State of Oklahoma. That its co-defendant, the Oklahoma Gas & Electric Company, is dependent upon this defendant for the supply of natural gas which it distributes in the City of Oklahoma City, and this defendant at all times has and is now furnishing an adequate supply of gas in Oklahoma City except in rare occasions.

71 It admits that for a few days during the month of December, 1917, its supply of gas has been insufficient to meet all requirements, but in this connection it respectfully shows to the Commission that it furnished all the gas which it has been able to produce or purchase, and not only all the gas which it has been able to produce or purchase in the vicinity of its pipe-lines, but that it has taken extraordinary precautions to supply an adequate supply of gas for its customers during the present winter. That in doing so it has extended its main trunk line to what is known as the Morrison Field by building at a great expense to it a twelve inch line from a point on its original system near Wellston, Oklahoma, in a northerly direction to the Morrison Field, and that in so doing it has expended approximately the sum of \$800,000. That

the Morrison Field is about 53 miles distant from its former pipe line system and this defendant was not bound in law to expend said sum of money, or to extend its line to said distant field, but has done so as a business proposition and in order to supply the continually increasing demands of its consumers for gas. That during the dates complained of, to-wit, from December 8th to December 14th, 1917, both inclusive, this defendant has supplied for use at Oklahoma City approximately 20,000,000 cubic feet per day, or approximately the equivalent in heat units of 1,000 tons of coal per day during said period.

This defendant further says that on December 18, 1917, it completed its pipe line connection with the Morrison Field, and that since said time it has had an additional supply of gas from said Morrison Field of approximately 20,000,000 cubic feet per day, which is the carrying capacity of its pipe line connection with said Morrison Field. This defendant — that at present it has an adequate supply of gas for all domestic consumption in the City of Oklahoma City, and in supplying its consumers it is now and
72 has at all times been giving preference to domestic consumption.

This defendant further says that in the nature of things the quantity of gas which it can supply is limited by the amount of gas which it can purchase, and by the carrying capacity of its pipe line system.

This defendant further says that its original pipe line connecting Oklahoma City with the gas fields, was a twelve inch line from which was supplied not only Oklahoma City, but Edmond, Guthrie, Shawnee, Chandler, and various other towns along its system. That when said line was constructed it was of ample capacity to supply the people then living in the towns supplied by it, but that the City of Oklahoma City since its original pipe line was constructed has increased in population from approximately 30,000 to approximately 100,000; that the City of Tulsa which is also supplied by this defendant, during the same period has increased in population from approximately 12,000 to approximately 65,000; that the City of Muskogee, which is likewise supplied by this defendant, had during said time increased in population from approximately 20,000 to 35,000, and that the population in other towns and cities supplied by this defendant has likewise increased. That at the same time the population served by this defendant has been increasing so rapidly the supply of gas available in Oklahoma has been shifting from place to place. That the original fields from which this defendant procured a supply of gas have been almost exhausted, and that very little of the gas now served to the people along its lines is coming from said fields. That new fields have come in from time to time which this defendant has reached by the building of additional pipe lines at great expense, and that said fields have lasted from two to three years. That this defendant extended its pipe line into the Cushing field during the year 1912 at a cost of approximately \$325,000, but that the gas supply from the
73 Cushing field has been largely depleted.

That the supply of gas from the various fields which it has reached has been exhausted largely by waste and not by use, and

that the defendant during the past eight years has been doing everything within its power to bring about the conservation of gas within the State of Oklahoma, and has at all times co-operated with the public officials of the State in seeking to conserve the supply of gas for domestic consumption. That in undertaking to keep pace with the consumers served by this defendant, in addition to extending its lines to new fields — has also built an additional twelve-inch line from Oklahoma City alongside its original twelve-inch line for a distance of thirty miles to Wellston, thereby doubling its carrying capacity for that distance. That while the price of fuel during said period has advanced from forty cents per barrel to \$1.85 per barrel, the price of natural gas has not been changed in Oklahoma City.

Further answering the specific charges of said complaint this defendant says:

1. It denies that for a long period of time this defendant has failed to furnish an adequate supply of gas to meet the demands of Oklahoma City in ordinary severe winter weather, but on the contrary it avers that during the ten years which it has been supplying gas at Oklahoma City there have been very few days when the supply was not adequate for all domestic consumption.

2. It denies that it has continuously represented to the inhabitants of Oklahoma City that there would be an adequate supply of gas, but has at all times merely engaged to furnish said gas as it was able to procure and had advised all consumers to have a supply of coal or other fuel on hand in cases of emergency.

3. It denies that it has been negligent in the construction of its pipe line system, and denies that its lines are laid so near the ground as to be injuriously affected during cold weather.

74 It likewise denies that breaks in its pipe lines have been of frequent occurrence, but on the contrary alleges that during the ten years it has supplied Oklahoma City with gas there have been but two breaks, one of which was caused by a flood of unusual magnitude washing out a part of its pipe line, and the other caused by an unavoidable explosion.

4. It denies that it has utterly failed to provide more than one pipe line, and avers that it has doubled back its line from Oklahoma City to Wellston, and has built new lines into various gas fields for the purpose of procuring an adequate supply of gas.

It admits that it has not provided storage facilities for the storage of gas other than its pipe line system, and in this connection it avers that the cost of building storage facilities is so great as to be prohibited and that in the prosecution of the natural gas business storage facilities are not usual or customary, and in fact are practically unknown. It likewise denies that its stockholders are practically the same as the stockholders of the Oklahoma Gas & Electric Company, but on the contrary avers that its stockholders are entirely separate and distinct from the Oklahoma Gas & Electric Company, and that there is no common ownership or common management of the two defendants.

It admits that the Oklahoma Gas & Electric Company, its co-defendant, has a franchise for the distribution of gas in Oklahoma City, but it denies that the population of Oklahoma City has a right to depend entirely for fuel upon these defendants, and avers that the reason the people wish to use gas is because it is cheaper and more convenient fuel than any other, and not because other fuel is not available, but on the contrary it alleges that before it constructed its pipe line system, the people of Oklahoma City were entirely without natural gas, and that they have now the same opportunity of procuring other fuel as they would have if there were no natural gas to be supplied.

6. It denies the averments of the sixth paragraph of said complaint.

7. It denies the averments of the seventh paragraph of said complaint.

8. It denies that it or its co-defendant has at any time withheld any available gas from the City of Oklahoma City and refers to the allegations of this answer hereinbefore set forth showing the efforts it has made at all times to furnish an adequate supply of gas.

Wherefore, having fully answered said complaint, this defendant prays that it may be discharged.

(Sgd.)

AMES, CHAMBERS, LOWE &
RICHARDSON,

Attorneys for Defendant.

Endorsed: No. 3197. Before the Corporation Commission of the State of Oklahoma. In re Oklahoma Gas & Electric Company and Oklahoma Natural Gas Company. Separate Answer of Oklahoma Natural Gas Company. Filed Jan. 2, 1918.

Thereafter, on the 9th day of January, 1918. The Oklahoma Gas & Electric Company filed its separate answer in cause No. 3197, which is in words and figures following, to-wit.

Before the Corporation Commission of the State of Oklahoma.

Cause No. 3197.

In re OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL GAS COMPANY.

Separate Answer of Oklahoma Gas & Electric Company.

The defendant, the Oklahoma Gas & Electric Company, files its separate answer to the complaint heretofore filed in this case by the County Attorney of Oklahoma County, Oklahoma, and says this defendant is engaged in the business of distributing natural gas to the inhabitants of Oklahoma City, in the State of Oklahoma, under

the terms and conditions of a franchise granted to it by the City of Oklahoma City; that it secures this natural gas from its co-defendant the Oklahoma Natural Gas Company, which said Company is the only Company at the present time equipped to supply natural gas to the City of Oklahoma City.

This defendant denies that it has utterly, wilfully and negligently failed in all respects to comply with Order No. 1028 of this Commission on December 8th, 9th, 10th, 11th, 12th, and 13th, 1917, as set forth in said complaint, or at any other time.

This defendant denies that any death may be directly attributed to its negligence and wilful failure to comply with said Order, and denies each and every other allegation in said petition contained.

78 This defendant further states that it has distributed to the City and citizens of Oklahoma City all the gas which it was able to obtain on the dates mentioned in said complaint, and that it has done everything in its power to protect the domestic consumers of said City of Oklahoma City, not only on the dates mentioned in said complaint, but at all other times. This defendant further states that while it operates a power house in the City of Oklahoma City for the generation of electricity, relying greatly upon gas as a fuel in said power house, it did on the dates mentioned in said complaint, and on many other days, deprive itself of the use of gas as a fuel in order that the requirements of the domestic consumers of Oklahoma City might be more fully and satisfactorily served, notwithstanding the fact that in so doing it subjected itself to a loss of many thousands of dollars in the operation of its power plant for the generation of electricity.

This defendant further states that for the month of December, 1917, the shortage of gas, which it admits did exist, especially on the dates mentioned in the complaint, caused this defendant a loss of not less than \$15,000.00 in the operation of its power plant for the generation of electricity, due to the fact that this defendant was compelled to burn fuel oil in said power house.

This defendant denies that it or its co-defendant have utterly failed to provide more than one pipe line with which gas was brought into the City, and denied that the pipe lines and distributing system in the City of Oklahoma City are inadequate to meet the demands of usually severe winter weather in this climate.

79 This defendant admits that it has not provided any storage facilities as prayed for in paragraph four of complainants' petition, but states that while the storage of natural gas from a physical standpoint is practical, from a business standpoint such a storage capacity is entirely impractical. This defendant further states that to supply a storage capacity sufficient to take care of a shortage such as existed on the days mentioned would call for not less than 15,000,000 cubic — holders, which would cost, exclusive of real estate on which to place such holders, not less than \$10,500,000.00, and that the depreciation and interest on this investment alone, not to say anything of operating costs nor return upon the investment made would equal the sum of \$1,260,000.00 per year.

or not less than \$300,000.00 more than the total sum received from the sale of gas in Oklahoma City.

This defendant further states that for the year 1916 there was sold in Oklahoma City \$926,000.00 of natural gas, and that of this sum this defendant received less than \$300,000.00 as its share under the contract existing between it and its co-defendant, the Oklahoma Natural Gas Company, and that if storage capacity adequate to take care of the shortage of natural gas during the period covered by the complaint herein were ordered in at the expense of this defendant, it would be subjected to a loss less than \$900,000.00 per year, and if such storage capacity were ordered in at the expense of this defendant and its co-defendant, the said defendants would be subjected to an outlay of at least \$300,000.00 per year more than they would receive from the sale of natural gas in Oklahoma City.

This defendant denies that this defendant and its co-defendant have the same stockholders in so far as controlling stock is concerned, and denies that each of said corporations is dominated and controlled by identical stockholders. This defendant denies that more than fifty per cent of each of the defendant corporations are owned by a certain foreign corporation, and states that there is no common ownership whatever between this defendant and its co-defendant, and that there is no common management between this defendant and its co-defendant, and further states that this defendant and its co-defendant are in every manner, shape and form, save for the single exception of a contract existing between this defendant and its co-defendant as to the distribution of gas in Oklahoma City, wholly independent.

Wherefore, having fully answered, this defendant prays that the relief asked for by the complainant herein be denied and that this defendant be discharged.

(Sgd.)

PAUL REISS,

Attorney for Oklahoma Gas & Electric Co.

Endorsed: No. 3197. Corporation Commission of Oklahoma. In Oklahoma Gas & Electric Co. Cause No. 3197. Separate Answer of Oklahoma Gas & Electric Company. Filed January 9, 1918.

Thereafter, on the 2d day of January, 1918, a hearing was had in said cause before the Corporation Commission of the State of Oklahoma, and the following proceedings and evidence had introduced:

82 Before the Corporation Commission of the State of Oklahoma,

Cause Number 3188.

CHAS. H. RUTH and H. R. TRIPP, Complainants.

VS.

OKLAHOMA GAS & ELECTRIC Co. and OKLAHOMA NATURAL GAS Co.,
Defendants.

Cause Number 3192.

T. F. DONNELL et al., Complainants.

VS.

OKLAHOMA GAS & ELECTRIC Co., Defendant.

Cause Number 3197.

CHAS. B. SELBY et al., Complainants.

VS.

OKLAHOMA GAS & ELECTRIC Co. and OKLAHOMA NATURAL GAS Co.,
Defendants.

Appearances:

C. H. Ruth and H. F. Tripp, by C. H. Ruth.

T. F. Donnell, for himself, and others.

Chas. B. Selby, for himself and others.

Paul K. Reiss, Representing the Oklahoma Gas & Electric
Company in all three cases.

C. B. Ames, Representing the Oklahoma Natural Gas Com-
pany, in Cause- Number 3188 and 3192.

*Transcript of Proceedings Had Before Commissioners Humphrey
and Russell, at Oklahoma City, January 2nd, 1918.*

Reporter, E. F. Galbraith.

83 Commissioner Humphrey: Shall we try each separately or
otherwise?

C. B. Ames: So far as the Oklahoma Natural Gas Company is
concerned we would prefer to try them both together.

Judge Ruth: So far as the case of C. H. Ruth, et al., against the
Oklahoma Gas & Electric Co., I have no objection to a consolidation
of the cases if it will expedite matters.

Commissioner Humphrey: Then let all three cases be consoli-
dated.

C. H. Ruth: In the first case, in which I am complainant, I desire to amend my complaint at this time by adding thereto a list of about 12,000 complainants who desire to join me in this complaint. (List as explained, filed and made a part of complaint in cause #3188.)

Paul K. Reiss: With the permission of the Commission the defendant, the Oklahoma Gas & Electric Co., desire to file a formal answer. (Answer of Okla. Gas & Elect. Co. filed.)

Chas. B. Selby: I might make this suggestion; I understand from Counsel representing the Gas Company that it is admitted that there was a shortage of gas; with that understanding——

C. B. Ames: It might possibly save time by reading the answer of the Oklahoma Natural Gas Company. (Answer read and filed as a part of the records.)

Chas. H. Ruth: I feel that we should demur to this answer for the reason that we have asked the Court to require them to discover to this court the names of the stockholders, and this answer is not sufficient pleadings when it states that the stockholders are not the same; we asked that they show their books as to who the actual stockholders are; I feel that they have not fully answered, and should be required to do so. We ask them to show the amount of gas, or the volume of gas, furnished by the Oklahoma Natural Gas Co., to the Oklahoma Gas & Electric Co. We ask that they discover by their answer the volume of gas distributed to the people of Oklahoma City; we ask that they discover the names of the stock-
84 holders of each of the companies, so that this court may compare them and not put the burden of proof on us. We have asked that subpoena be issued requiring them to appear and bring their books, and feel that they should be required to set up in their answer who the stockholders are; that is what we are asking for. They set up here that they have furnished gas here that is equitable to the heat units of 1,000 tons of coal. They do not set up what the heat unit in 1,000 feet of gas is; I understand the British Thermal unit is the unit by which heat is measured in gas. If the proceedings were in District Court the answer would be sufficient, but here I do not feel it is sufficient. As a matter of fact we filed a praecipe for subpoena against these companies, and I would like to ask at this time if their Secretary is here with the books as asked for; this book, stock book should show the President of the Board of Directors, and all stockholders, if attachment has not been issued shall ask that it be done so. We have also issued subpoenas for J. R. Cottingham, Phil Baird, Mr. Kunderer, Paul Gresham, W. R. Molinard, and R. F. Alexander; these subpoenas have been regularly issued; they set up in their answer that they have never represented to the people of Oklahoma City that there would be a sufficient supply of gas. This information was given to the people of Oklahoma City by a committee consisting of J. R. Cottingham, Rev. Phil Baird, and W. R. Molinard. The citizens certainly were lead to believe that there would be an adequate supply of gas; we have the utmost confidence in Rev. Phil Baird, J. R. Cottingham and Mr. Molinard, but we want these people here to find out what

statement was made to this Gas Company to cause them to go to the people of Oklahoma City and say "Rest assured, you will have plenty of gas this winter at Oklahoma City; it will not be denied by counsel that such report was made through the papers, and we want to know what that statement was based on; whether on the statement of Mr. Melnard or the Oklahoma Natural Gas Co., and we feel that this is hardly a proper answer. I would like to inquire if Mr. Alexander is here.

85 Commissioner Humphrey: Mr. Alexander seems to be present; what other witness do you desire to be present, if all the witnesses are not here we can set another day so that we can have all the witnesses here.

C. B. Ames: In view of the facts that there are public records on file with this Commission, under oath, showing who the stockholders of the Oklahoma Gas & Electric Co., and the Oklahoma Natural Gas Co., that are available for this gentleman or anybody else who wants to see them, which shows that there is no common ownership of these two corporations; in addition to that we have here a late list of the stockholders; Mr. Reiss has the list, our stock book itself is in the mail now on the way here; these are public records, known to everybody who are posted.

Commissioner Humphrey: Mr. McKay, do you recall whether or not these companies have reported annually?

Mr. McKay: I am not sure whether the Oklahoma Natural Gas Co. have reported every year or not; I think the Oklahoma Gas & Electric Company have.

Mr. Reiss: I will announce that the stock was transferred in Chicago; I didn't bring the stock book, but have a list under date of December 31st. If necessary you can examine that list.

Commissioner Humphrey: Mr. Ruth and Mr. Selby can examine the records.

Mr. Selby: I would like to join in the demurrer to some parts of the answer, which in its nature is confusing taken as a whole, and that is the inability of the gas company to supply the adequate supply of gas as the law requires. The duty is clear as to a public utility; its inability to comply with the requirements of the public in meeting the conditions; that is in no respect a defense; the law in this state requires a sufficient and adequate supply of gas, and the mere fact that they have not been able to do so, is no defense.

86 Commissioner Humphrey: We have an order to that effect, and if they are not doing it, we will fine them; let the demurrer be over-ruled and proceed with the evidence.

Mr. Selby: Excepted to, by Mr. Selby.

HENRY M. GRAY, being duly sworn, testified as follows:

Q. State your name?

A. Henry M. Gray.

Q. Your business?

A. Attorney.

Q. Place of business?

A. Oklahoma City.

Q. How long have you lived here?

A. Since February 1909.

Q. Did you live in this City December of last year?

A. Yes sir.

Q. Are you a consumer of natural gas?

A. I am.

Q. Commercial or domestic use?

A. Domestic.

Q. Tell the court the condition of the gas supplied as found by you at your home covering the period beginning December 7th and ending December 14th.

A. We had gas at all times, and a supply by which we could cook meals, but not well; for heating purposes the supply was insufficient, and it was impossible to keep the house comfortable; we tried putting up a small coal stove, and let the valves wide open all the time.

Q. Your gas jets were open?

A. Yes, sir, they were open full and unobstructed.

Q. Tell the court as to the comparative flow.

A. I don't think we were getting nearly as much gas as we should have.

Q. In your judgment what was the difference?

A. I base it principally upon the Range; we didn't have enough to cook with good.

Q. What would you say as to the flow; would it be one-fourth, one half or one eighth as much as you ordinarily have?

A. I couldn't measure it.

Q. As to the quantity of heat, what would you say?

A. We did not get as much as we ordinarily did with the valves open.

Q. Give the court a general idea.

A. I couldn't say; it didn't seem as though we were getting half as much as we usually do.

Q. Did you make an investigation during that period of time as to gas shortage in this city?

A. Yes sir.

Q. What are you able to say with reference to the conditions in the city generally with reference to the flow of gas during that time.

A. It was reported to me in a great many instances in various parts of town that there was no gas at all; that was not the condition at my place; reports came in to me from the Eastern and Southern part of town that the flow was very low, and in places they reported the gas out entirely; I received those reports by phone, letter and individuals, and every report was to the effect that there was not enough heat to permit their houses to be comfortable.

Q. In your investigation did you determine whether or not there was no flow of gas in places?

A. Yes sir, absolutely.

Q. Are you able at this time to state the average prevailing temperature.

A. It was about zero at all times.

Q. I will ask if you didn't get a report from Mr. Slaughter, the weather bureau man, showing that the temperature ran along about ten to 12 degrees above?

A. I asked him for a report as to the temperature and he furnished it.

88 Q. In your investigation did you determine whether or not there was any suffering by consumers; if so to what extent?

A. There was a great deal of suffering by everybody more or less especially in families where they had small children and sickness among the poor; there were numerous complaints of sickness coming in; have heard of one or two cases of death due to insufficient heat.

Q. I will ask you if that is the report furnished by Mr. Slaughter.

A. Yes sir.

Q. With that to refresh your memory I will ask if you can state what was the prevailing temperature during those dates?

A. From this report from December 7th to Dec. 14th, it run from 9 above to 6, 5, 5, 11, 4 and 11 above zero; that is the coldest during those days.

Q. That is from what date?

A. From the 7th to the 14th.

Q. Did you make investigation to determine with reference to these dates, as to whether or not children who had contracted colds and pneumonia, having to remain away from schools?

A. Yes sir. There was some reports of that kind.

Q. Are you able to state about what per cent of school children were kept away from schools on those days due to insufficient heat?

A. It was reported to me from schools which use gas that their attendance had fallen off 25% or a little better.

Q. You say you have lived here about ten years?

A. Nearly that long. I came here in February, 1909.

Q. You have been in this city during December of these years?

A. Yes sir, continuously.

Q. Are you able to say as to the preceding years as to the general temperature that this city had during Decembers heretofore?

A. I don't know as I can say as to any particular December?

Q. I mean generally?

A. No; I can say this: this was nothing unusual as cold weather conditions for winter time in Oklahoma City; there have
89 been times when the thermometer (?) has gone below zero.

Q. You mean that they have previous Decembers that have been considerably colder?

A. Oh yes, that was not an unusual cold period during that time.

Q. You say it was not unusually cold as compared to other Decembers?

A. I think not.

Q. As to the population of the city are you able to say to the court whether or not it has increased?

A. I could not say about that, but it has increased.

Q. Have you any opinion as to the increase during the period of the last 12 months?

A. I would not be surprised if there has not been an increase of eight to ten thousand inhabitants.

Q. Do you know whether or not, within the last few years, there has been any extension of the pipe lines of the gas company?

A. My information is that there has been.

Q. To what place?

A. El Reno and Norman.

Q. Do you know if Yukon has been furnished gas?

A. No sir, but I think it has; it would probably come in on the line to El Reno.

Mr. Reiss:

Q. As to your investigation, as to sickness; did you make that investigation personal, or did the information reach you some other way?

A. I am in the County Attorney's office, and those complaints came in to us.

Q. As to death?

A. I don't know.

Q. As to school buildings, don't they all burn coal? What other school except the High School uses gas?

A. The Culbertson School.

Q. Did you say extension of gas has been made to Norman?

A. I have been told so.

90 C. B. Ames:

Q. Your information as to lines which have been extended is not of your knowledge?

A. No sir.

Q. You speak of your own knowledge as to the increase in the population of the City?

A. That is my estimate.

Q. That is about as accurate as to your report with reference to the weather conditions? You don't know what the weather conditions have been except this past December, of your own knowledge?

A. No.

Q. Do you know what the record shows as to the extent of the cold weather?

A. I haven't the records of December; I have the records as to other periods.

Q. Your statements as to the weather during these previous Decembers is of your own estimate?

A. Yes sir. I ask them to give me the ten day low period.

Q. You could have secured accurate records of December if you had wanted to?

A. Yes sir.

Q. Did you know there was in file with this Commission reports of stockholders of these two companies?

A. Yes sir.

Q. Did you examine those records?

A. No sir.

Q. Newspaper reports are that you had made investigation?

A. I was told by a man that made the transcript in a former hearing that Billingsley Co., of Chicago, show on their records that they owned 51% of the stock in Oklahoma City of one company and 60% of the other.

Q. That was his observation?

A. That was a man who had transcript of the books, or a copy of them.

91 Commissioner Humphrey: This is immaterial, as the records of the Commission are subject to their inspection.

Mr. Reiss:

Q. Where do you live now?

A. 15 W. 10th St.

Q. Did you ever receive a copy of "Gas Customers' Hand Book"?

A. I couldn't say; I have seen them.

Q. I will direct your attention to pages 5 and 11 and ask you to read them to the Commission?

Mr. Ruth: On behalf of myself and associates we object to reading into the record any ex parte statement made by the gas company.

Commissioner Humphrey: I don't think it is proper cross-examination.

Mr. Reiss: We will introduce this Book as Defendant's Exhibit "2."

Q. You have seen this book?

A. I have never read it; I suppose I have seen it.

Commissioner Humphrey: Have you anything to take the place of the shortage of gas?

A. No sir.

G. R. KUNDERER, being duly sworn, testified as follows:

Mr. Selby:

Q. State your name.

A. G. R. Kunderer.

Q. What business are you engaged in?

A. Restaurant.

Q. You reside in Oklahoma City?

A. Yes sir.

Q. Where is your place of business located?

A. On West Main Street.

Q. You are engaged there in supplying regular meals to patrons of Oklahoma City?

A. Yes sir.

92 Q. Will ask you if on the 7th to 14th days of December inclusive if you were engaged in business at that place?

A. Yes sir.

Q. Were you a customer of natural gas at Oklahoma City?

A. Yes sir.

Q. You use natural gas for the purpose of cooking meals?

A. Yes sir.

Q. I will ask if, on the dates mentioned December 7th to 14th inclusive, you had an adequate supply of natural gas?

A. It seems to me that it was a little later on, the 15th, 17th or 18th, that it got so low.

Q. You remember the cold spell that we had here on the 7th day of December?

A. Yes sir.

Q. I will ask if that wasn't on Friday?

A. Yes sir. We managed to cook on that day.

Q. What occurred on the Saturday following?

A. We managed to get lunch.

Q. You closed up for the evening meal on Saturday?

A. Yes sir. That was on the 8th I think it was.

Q. You closed on the 8th day of December, the 2nd day of the cold spell.

A. We closed on Saturday.

Q. Was it necessarily because you didn't have a sufficient supply of gas.

A. Yes sir.

Q. Were you dependent entirely on the gas supply for cooking and heating purposes?

A. Yes sir.

Q. Was it possible for you to substitute any other kind of fuel?

A. No sir.

Q. How many people would you supply with food a day?

A. It varies, it will average 1,200 a day.

Q. That means 1,200 a day.

A. Yes sir.

93 Q. How long were you required to remain closed?

A. Saturday evening and the following Monday evening, and all day the next day, on Tuesday.

Q. During that time did you have enough gas to heat your place of business?

A. No sir.

Q. Do you ordinarily keep open on Sunday?

A. No sir.

Q. You would have closed on Sunday anyway?

A. Yes sir.

Q. How long have you used gas as fuel in your place of business?

A. Every since we have been running the business.

Q. Do you remember any other time that you have been without gas?

A. I think once or twice on account of a broken pipe line.

Q. Did you ever experience the same shortage of gas when there was no break?

A. We had a shortage once before, but managed to get by.

Q. Are you positive that it was impossible to get enough gas to cook with?

A. We wouldn't have had sufficient gas if we had stayed on.

Q. Did you make any personal inquiry or investigation among other business men in Oklahoma City to ascertain as to the shortage?

A. No sir, it is just what people would say coming and going.

Q. Do you use gas in your home?

A. I live in a hotel.

Q. All you know of general conditions is what you have heard?

A. Yes sir.

Q. What was the opinion expressed at that time with those whom you talked?

A. Some seemed to — better supplied than others.

Q. How long have you been in Oklahoma City?

A. Since 1902.

Q. During the course of your residence here have you seen the temperature as low as 5 degrees above zero, in your past residence here?

94 A. Oh yes; I don't know what months it was, but the weather was as cold as that.

Q. In fact during your residence here you have seen the temperature much lower?

A. Yes sir.

Judge Ames: Possibly we can save time; we have already admitted in our answer that there was a gas shortage.

Commissioner Humphrey: The Commission understands that. And might make a finding that there was a shortage of gas.

CHAS. H. RUTH, being first duly sworn, testified as follows:

Mr. Selby:

Q. State your name.

A. Chas. H. Ruth.

Q. Your residence.

A. Oklahoma City.

Q. Were you a resident of Oklahoma City during the month of December, 1917?

A. I was.

Q. During the recent cold spell beginning December 7th and extending to December 14th, were your premises connected with the Oklahoma Gas & Elec. Co., mains for service of gas?

A. They were.

Q. During that period did you make investigation to ascertain whether you were receiving sufficient gas?

A. I did.

Q. Did you make investigation at that time to ascertain whether or not your meter was registering the same with the low pressure of gas as with ordinary pressure?

A. I wouldn't say low pressure; there was pressure, but it wasn't gas.

Q. State to the court what investigation you made concerning the action of the meter during that cold spell.

A. I made five tests; one on the 10th, one on the 12th; one last Thursday; one last Sunday and one yesterday.

95 Q. Tell the court the result of your investigation as compared to normal or low temperature.

A. I have 13 burners; to make an investigation I turned on each burner full force, and went into the cellar, after bundling myself up on a cold day, and set with my watch in my hand in front of the meter, taking the small dial as a gage I noted carefully on five occasions how long it would take the hand to make a complete revolution, and discovered on each occasion that the hand made a complete revolution of that dial in exactly three minutes; I tried it five different times; the gas was low, and I had no heat in my house at all; I used what is called a "simmer" on my gas range to measure the height of the flame; the frame of my gas range is one inch from the top of the burner; during the cold spell there was just a small blue flame that come from that simmer, a half inch below the top of the range; in other words the blue flame was one-half inch high; when it was $1\frac{1}{2}$ inch high I went to the cellar and took my watch and set before the meter and discovered this hand making two complete revolutions in three minutes; I then lit my stove had a small ring $1\frac{1}{4}$ inch in diameter, just a little blue flame that didn't come up more than a $1\frac{1}{2}$ inch, then when the warm weather came on last Sunday morning I went down there again and measured my simmer, turned every stop-cock wide open to get an equal test; instead of the flame being a half inch below the top, it was $4\frac{1}{2}$ inches above the stove; in other words there was about five inch flame, and every burner in the house was just in proportion to that. The meter was running just as fast when I had no fire as it was when I had a five or five and a half inch flame; I set there before the meter with my watch in my hand; I took three watches down there to see how they compared.

Q. As to general conditions in the city during the period between December 7th and 14th, 1917, do you know of your own personal knowledge whether or not there was suffering occasioned by reason of any gas shortage?

96 A. I didn't investigate the homes; some came to my office with colds so bad they could hardly speak above a whisper;

I just know from what I heard in conversation with others. There are complaints from every part of the city represented by that petition.

Q. Did you have occasion to investigate the conditions in the business district?

A. No sir.

Q. Did you have occasion to visit the court rooms?

A. Yes sir, I visited some of the court rooms in the court house; I visited Judge Donnell's office; I found little or no heat in any of them.

Judge Ames: Defendants have already admitted that there was a gas shortage.

Q. How long have you lived in Oklahoma City?

A. About 10 years.

Q. Do you know whether or not that cold spell in December is unusual for December of past years, of which you recall?

A. No, I don't recall of where it came quite so early; we have had extremely cold weather though.

Q. 5 above zero is not extremely cold weather is it?

A. No, I remember when it was 6 below; I remember at nine o'clock in the morning on one occasion it was that cold; the reason I recall that is because of a Mr. (?) — was killed by the Frisco.

Mr. Reiss:

Q. Where do you live?

A. 924 N. Shartel.

Q. Have you ever received this book: "Gas Customers' Hand Book?"

A. I never did.

Q. Do you know whether there is one at your home or not?

A. I know there is not one at my home; there is only myself and wife at home, and she refers every scrap of paper that comes to the house to me.

T. F. DONNELL, being duly sworn, testified as follows:

Mr. Selby:

97 Q. State your name?

A. T. F. Donnell.

Q. What is your business, and place of residence?

A. I am a justice of the Peace, I live at 435 W. 27th St.

Q. How long have you been a resident of Oklahoma City?

A. 18 years.

Q. You maintain a home and have a family?

A. Yes sir.

Q. Are you a consumer of natural gas?

A. I have been ever since it was put in the city.

Q. At your home?

A. Yes sir.

Q. And at your office?

A. Yes sir.

Q. Were you acquainted during the period from December 7th to 14th, 1917, as to the condition of gas here, and whether or not there was a general shortage?

Judge Ames: That is admitted.

Q. And as to any condition produced thereby, whether there was any suffering and sickness occasioned by the gas shortage?

A. Yes sir.

Q. Tell the court what you learned, or heard, or know concerning sickness and suffering caused by gas shortage?

A. To begin with in my immediate family we had some severe cases of cold bordering on pneumonia, caused by this cold spell of Dec. 7th.

Q. Do you know of any relatives outside of your immediate family that suffered or was sick on account of gas shortage?

A. I have two little grandsons, who live in another place that had to be brought to my house on account of it.

Q. Had you provided for other forms of heat?

A. Yes sir. I had a combination coal and gas stove, which we used when we were lucky enough to get coal; in addition to that we had a kerosene lamp stove.

Q. You used one of them also?

98 A. Yes sir, during our sickness.

Q. Tell the court from your observation during that time as to general conditions?

A. Mr. Selby, all I know is only from what is reported to me in my office.

Q. Are you able to say pretty general what the conditions were?

A. Yes sir, every one that would come to court room expressed themselves as having had colds and some cases of pneumonia.

Q. State, if you know, as to the supply of other fuel in the city covering that period of time.

A. As to the wood proposition I made no inquiry, but there was a coal shortage, there was not much to be had; I got a little and if it hadn't been for that I don't know what I would have done.

Q. You had difficulty in getting what you did get?

A. Yes sir.

Q. There was a general shortage of coal at that time?

A. That was my information.

Q. Are you willing to say whether or not the people in the city have depended largely on gas for domestic purposes?

A. We have, altogether, yes sir.

Q. With reference to business enterprises, do you know whether or not they had sufficient gas during that period?

A. Nothing only what was told me; the cafes and restaurants told me there was a gas shortage.

Q. As to manufacturing establishments, do you know whether they had a sufficient supply of gas?

A. Nothing only what was told me.

Commissioner Humphrey: The Commission might state that industrial users of gas were required to be disconnected.

Judge Ames: We have admitted that there was a gas shortage.

Mr. Selby:

Q. With reference to previous Decembers during the years that you have lived here, what have you found, as to general temperatures, existing generally?

99 A. Since the Oklahoma Natural Gas Co. has been supplying the city, my judgment is that we have never had a December such an extreme cold spell as that.

Q. What I am asking: during previous Decembers have there been cold spells during those months?

A. Oh yes, there have been cold spells.

Q. You are unable to say about previous Decembers as to how cold it got?

A. Yes sir, I know, generally we expect a cold spell that comes the latter part of December and from the first of January on.

Q. That is the coldest weather?

A. Yes sir; our extreme cold weather comes the latter part of January, I have seen on Christmas day re-vegetation.

Q. During this cold spell in December, 1917, if there was gas in the pipes were you able to get any for heat at all?

A. We managed to get a bite to eat, my wife would get up about 4:30 or five o'clock and cook sufficient to last during the day; during the day we would have a small blue flame and on two or three different occasions it went out entirely with the pipes wide open.

Q. When the flame would go out entirely, would the meter register if the valves were open?

A. Yes, I was told by a plumber that the air would force the meter to run, and I was wondering if the gas company would charge me up with air; they have treated me very nice; and if it had not been for sickness in the family and the expense I would not have made any complaint.

Q. Who is your Doctor?

A. Dr. Looney.

Q. Do you know of any other cases?

A. I was told of several.

Judge Ames:

Q. What did you pay for coal during that cold spell?

100 A. I think it was \$10.00.

Q. Do you know whether or not the cost of fuel was raised in price?

A. Not to my knowledge, I was told so; it looked like what I got was very small compared to what I paid for it.

Q. The general understanding was that the price of coal was raised.

A. I was told that; I telephoned to several different dealers, and finally got the promise of some coal from Schofield Co.; I phoned on the 8th, on Saturday morning, early, and couldn't get any; Schofield received some late Saturday evening.

Mr. Reiss:

Q. You say the meter was actually running when there was no flame whatever?

A. Yes sir. We had turned it on full blast, and couldn't even smell gas.

Q. But the burner was open?

A. Yes sir.

Mr. Ruth:

Q. Were you a resident of this city last June or July?

A. Yes sir.

Q. Do you recall that a committee was appointed by the Chamber of Commerce, for the purpose of investigating this gas situation?

A. Yes sir.

Q. Do you remember the report made through the newspapers in the city?

A. Yes sir.

Q. Did they, or did they not say there would not be a shortage of gas this winter?

Commissioner Humphrey: The Commission understands about there being a committee appointed for that purpose.

Mr. Ruth: My object in examining the witness along this line was to show to the Court that during the summer of last year
101 there was a committee appointed by the Chamber of Commerce, consisting of Mr. Cottingham, Mr. Baird, and Mr. Molinard. Mr. Molinard was a member of that Committee; that a report was made to the citizens of Oklahoma City by that committee that there would be no shortage of gas this winter; I want to show by this witness that he relied on that report and made no provision for other fuel.

W. R. MOLINARD being duly sworn, testified as follows:

By Mr. Ruth:

Q. State your name?

A. W. R. Molinard.

Q. What position if any do you occupy with the Oklahoma Gas & Elect. Co.?

A. I am manager.

Q. Do you occupy any position with the Oklahoma Natural Gas Co.?

A. No sir.

Q. How long have you been manager of the Oklahoma Gas & Elect. Co.?

A. Since it was incorporated in 1909.

Q. And you were such manager during the summer of 1917.

A. Yes sir.

Q. And you were manager from the 7th day of December 1917 until this date.

A. Yes sir.

Q. From whom does the Okla. Gas & Elec. Co. obtain its supply of natural gas?

A. The Oklahoma Natural Gas Co.

Q. Your company holds a franchise from this city under Ordinance #665.

A. I do not recall the number, but we hold a franchise.

Q. The instrument I hand you is a copy of the franchise?

A. Yes sir.

Q. From whom do you purchase your gas for distribution in this city?

A. The arrangement we have with the Oklahoma Natural Gas Co., is that we make all collections and we retain a certain percentage of those collections, depending on whether it is for domestic or manufacturing consumption.

Q. You are only a collection agency for the Oklahoma Natural Gas Co.?

A. Yes sir, locally.

Q. Who owns the mains and pipes in Oklahoma City?

A. The Oklahoma Gas & Elect. Co.

Q. Yet you are simply agents of the Oklahoma Natural Gas Co.

A. Yes sir.

Q. Have you made any contract for the supplying of gas here with any other company than the Oklahoma Natural Gas Co.

A. No.

Q. Under your arrangement with them you can only distribute such gas as they supply?

A. No there was a provision made——

Mr. Reiss: We object; let the contract speak for itself.

Q. Is that the contract you have in your possession?

A. It is in the court room.

Q. In whose custody?

A. That particular contract is in Chicago, there are copies in the office; we have a copy here.

Q. Certified copies?

A. No, sir, I don't know.

Q. You don't know to your own personal knowledge that they are copies?

A. We are morally certain that it is a copy.

Q. During this gas shortage did you make any efforts, as manager of the company, to obtain any other supply of gas from any other source, save and except the Oklahoma Natural Gas Co.?

A. No sir.

Q. Did you last summer, or during the year 1917, as manager of the Oklahoma Gas & Elect. Co. attempt to make any other contract with any other person, firms, or corporation, for an additional supply of gas, other than the Oklahoma Natural Gas Co.

Mr. Reiss: Objected to.

Mr. Humphrey: Overruled.

Q. What kind of gas are you supplying to Oklahoma City now, artificial or natural gas.

A. Natural gas.

Q. Are you familiar with the number of heat units contained in natural gas.

A. In a general way, yes.

Q. Will you tell the court whether or not the Oklahoma Natural Gas Co. extracts gasoline from the Natural gas before delivering it to you?

A. I don't know anything about what arrangements are of the Oklahoma Natural Gas Co., in the field; I have no jurisdiction over that.

Q. Will you say that you do not know whether the Oklahoma Natural Gas Co. extracts gasoline by condensation or by compression from the natural gas before delivering it to you?

A. The only knowledge I have of such a plant is one located a few miles North of the city; I don't know whether the Oklahoma Natural Gas Co., is on that line or not.

Q. Some one has a reduction plant there whereby gasoline is extracted from natural gas?

A. Yes, by absorption process.

Q. That is for extracting gasoline from natural gas?

A. Yes sir.

Q. How long has the Oklahoma Gas & Elect. Co. been in business here?

A. Since 1909.

Q. You know nothing about an extraction plant anywhere else?

A. No sir.

Judge Ames: As a matter of information the Oklahoma Natural Gas Co. does have extraction plants on its lines, by which it extracts gasoline from natural gas before it reaches the consumer.

Q. Are you willing to admit as to the volume of gasoline extracted from 1,000 feet of gas?

Q. From $1/6$ to $1/18$ of a gallon.

Q. Are you willing to admit that it reduces the quality of gas furnished to the consumer for heating purposes?

A. No.

Q. As manager of this company, that holds this franchise, from Oklahoma City, you have never made any effort to supply Oklahoma City with gas, save and except such as supplied to you by the Oklahoma Natural Gas Co.?

A. No.

Q. Regardless of whether or not there was a shortage in sight you made no effort to procure any other gas?

A. No.

Q. Which charter or franchise are you operating under, Ordinance 1119 or 665?

A. Evidently the latter one, the one of the late date.

Q. You are not furnishing at any time gas to the citizens of Oklahoma as it comes out of the earth; and are not familiar with how the gas is handled before it is delivered to you for distribution at the edge of the city; whether the Oklahoma Natural Gas Co. has a receiving and producing station.

A. No.

Q. You cannot of your own personal knowledge say whether or not operating under your franchise for furnishing gas, you are furnishing gas in its natural form as it comes from the earth?

A. No.

Q. And you have made no effort to furnish the people with that character of gas?

A. What character of gas?

Q. Natural gas as it comes from the earth?

105 A. We have made no effort to control the business of the Oklahoma Natural Gas Co., as to whether they have an extraction plant or not.

Q. That was none of your concern?

A. No.

Q. You just distributed what was delivered to you?

A. Yes sir.

Q. And you charged for what was delivered?

A. Yes sir.

Q. Are you a member of a committee appointed by the Chamber of Commerce last June or July, for the purpose of investigating this gas shortage, that is to prevent a gas shortage?

A. Yes sir.

Q. Who are the members, other than yourself?

A. Mr. Crockett, Phil Baird, and one other man I don't recall his name, there were five altogether.

Q. Mr. Crockett is the man who is largely interested in the Morrison gas field?

A. I understand so, yes sir.

Q. He was on that committee?

A. Yes sir.

Q. He has retired from law practice on the income of his oil holdings?

A. Yes.

Q. You made a report back to Oklahoma City?

A. We made a report back to the Chamber of Commerce.

Q. Have you a copy of that report?

A. Not with me.

Q. You made it in writing?

A. No, the report that was sent out was based entirely from a communication from the Oklahoma Natural Gas Co., they gave us certain information, which was later embodied in its entirety in the report; I was not secretary, and don't know how much writing was done.

106 Q. Is it, or is it not a fact in that report you assured the people that there would be an ample supply of gas this winter, and that there would be no shortage?

Mr. Reiss: We object; let the report speak for itself; it is on file with the Chamber of Commerce.

A. I don't recall the verbiage of the letter; there were five or six pages explaining what the conditions were and the best prediction the Oklahoma Natural Gas Co. could make as to the future at that

time. My recollection is that there was not a general assurance that there would be no shortage, it was a prediction.

Q. That committee relied entirely upon the prediction of the Oklahoma Natural Gas Co.

A. Yes sir. Understand that report was verified by others to substantiate their report.

Q. By whom?

A. I don't know.

Q. Then the comparison of the wells set forth in that report was verified by the records of the Commission?

A. I think so.

Q. Did you not frequently as manager, last summer assure the people through the press that there would be an ample supply of gas this winter.

A. I did not; I gave my best predictions based on the reports received from the field.

Q. That was only a prediction based on a report of one company?

A. Yes sir.

Q. As associate member of that Commission appointed by the Chamber of Commerce, was a man that you expected to buy gas from Mr. Crockett?

A. We didn't know at that time.

Q. You know that the supply you received from the Oklahoma Natural Gas Co. was not sufficient.

107 A. Yes sir.

Q. You knew what the population of Oklahoma was?

A. Yes.

Q. You knew exactly what connections that you have?

A. Yes.

Q. You knew how much gas was necessary to supply the citizens of Oklahoma City, for domestic purposes as well as manufacturing purposes?

A. I do not.

Q. You have a daily or monthly balance sheet, showing how much gas is furnished to Oklahoma City?

A. We have a monthly balance sheet.

Q. Have you that for the month of November, 1917.

A. No sir.

Q. Can you state the amount you received from the Oklahoma Natural Gas Co. during the month of November, 1917.

A. I can state the amount we distributed according to what the meters registered, a certain percentage should be allowed for leakage.

Q. How do you determine the amount of gas you receive from the Oklahoma Natural Gas Co.?

A. They rely on our meter readers which are tabulated in our office and classified, and they have an auditor who goes through our office and checks up our records.

Q. Then you have no meter registering the volume of gas before it comes into this city?

A. No sir.

Q. Then the Oklahoma Natural Gas Co., relies upon the sale of gas by you as shown by what your meter registers?

A. Yes sir.

Q. Who stands the leakage loss?

A. We share it pro rata, according to the percentage of the gas which we take.

108 Commissioner Humphrey: We will stand adjourned to one o'clock.

Court convening at one o'clock, hears further testimony of Mr. Molinard.

Mr. Ruth: I understand Mr. Molinard desires to make some corrections in some of his testimony.

Mr. Molinard: I said that the Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Co. shares the loss due to leakage pro rata; the fact is that the Oklahoma Natural Gas Co. stands the entire loss, as we use the Oklahoma Gas & Electric Co. meters as a basis of measurements, and what does not go through the meter is not recorded.

Q. Do you know the pressure of gas that is necessary to maintain in your pipes to furnish an adequate supply of gas to the citizens of Oklahoma City?

A. We believe that it is necessary to have a 30 pound pressure up against the town as we express it; in other words we have to have that pressure in the main line up against the town, in order to carry an adequate supply to the extreme ends of the distributing system in the city on a cold day, and where the weather is approaching zero temperature, especially accompanied with high winds, in other words we try to keep a pressure there sufficient to meet the needs as near as we can in this locality.

Q. At any time during this cold spell, between December 7th and 14th, did your pressure go down below that?

A. Yes sir.

Q. Will you state the pressure on these various dates?

A. It is necessary for me to explain that the pressure builds up every night in the mains, and that pressure is drawn on so that it gradually drops, so that it is the unusual condition that we might have the pressure on a cold day, is that the pressure may be all that is necessary at five o'clock in the morning, and yet by two or three o'clock in the afternoon it may be inadequate.

Q. Do you know how it would be possible to keep that
109 pressure up to 30 pounds.

A. The Oklahoma Gas & Electric Co. have no control of that pressure from the field up to the receiving point.

Q. Then the Okla. Gas & Elect. Co. acting under its franchise makes no effort to keep that pressure up to 30 pounds, unless the Okla. Natural Gas Co., voluntarily keep it up?

A. No sir, we have no means of controlling that.

Q. Have you ever undertaken by any contract with any other company, to try to secure adequate gas to keep up that pressure?

A. No.

Q. Never tried to provide for it in any manner?

A. No.

Q. You rely wholly and entirely on the Oklahoma Natural Gas Co.?

A. Yes sir.

Q. In case of an emergency, what do you do?

A. We have no way to meet an emergency, other than having the pressure maintained at the receiving plant.

Q. Do you know from whom the Oklahoma Natural Gas Co. obtains its gas?

A. No, I know that it owns a number of wells itself, and that it buys a great deal of gas outside of its own wells, but I don't know who from.

Q. You know that there are gas wells in this state *that* gas of which are not utilized?

A. Yes sir.

Q. Knowing that have you made any effort to secure that gas?

A. No.

Q. Relying entirely upon one firm for furnishing it?

A. Yes sir.

Q. I understand you to say that your company takes the place of transfer company, or a delivery boy, you make the distribution and collect for it, and then receive a certain percentage of the receipts?

A. Yes sir.

Q. You know nothing about the heat units in the gas?

A. Yes, I have referred to a government report, made to the best of my recollection something less than a year ago, where government representatives took samples of gas from eight different locations in the state, and the results of those tests were published in a pamphlet issued by the Department of the Interior, Bureau of Mines; those samples vary from 940 to 1,060 British Thermal Units to the cubic foot of gas analyzed.

Q. Then if gas contains that many British Thermal Units, and gasoline is extracted from this gas, would you say the gas was impoverished and had heat units taken from it?

A. That may be true to a small extent, but from what I learn from technical journals the percentages is almost negligible.

Q. But the gas by the extraction of gas is to some extent denatured, impoverished to some extent?

A. Yes sir.

Q. You recognize these reports you have as practically correct?

A. Yes sir.

Q. I have here Bulletin #88, Petroleum Technical journal, issued by the Bureau of Mines, relative to condensers of gasoline taken from natural gas, published by Geo. Burrow, et al., if this was presented to you upon authority of the Bureau of Mines, and Department of the Interior, would you admit that it was technically correct?

A. Yes sir.

Q. I will ask you to read page 62, as to amount of gas taken from

the Natural Gas in the Kiefer and Glenn pool fields, this is in the form of tabulation: page 62.

A. Residue of gas 1313 B. T. U.

Q. What is the specific gravity?

A. In the first case, 83 points, and the 2nd, 76 points.

Q. Looking to the extreme right of the page will you read the balance of that report?

A. Under column headed remarks: $\frac{1}{2}$ gal. per 1,000 cubic feet of gas; that is from the Glenn Pool in the State of Oklahoma. The particular paragraph is headed Plant #—, Kiefer; will see 111 that has nothing to do with gas coming to Oklahoma City under that schedule.

Q. The Gas is pretty much the same all over the state, is it not? Some poor and some good.

A. I am not familiar with gas as a whole.

Q. When your pressure is reduced, is it, or is it not a fact that the gas thins out?

A. The ratio or volume for any amount of gas in two samples of gas from the standpoint of difference of pressure, I understand you are interested in.

Q. Yes.

A. We take a volume of gas, Barometric 14.4 pounds, elevation 15 S. L. 1,000 ft. elevation 14.4 pounds; multiply that by 16 in order to reduce it to ounces, and get 230.4 ounces barometric or atmospheric pressure; if you have a sample of gas of 2 ounces pressure add that to the atmospheric pressure and get 232.4 ounces; if you have gas of 5 ounces pressure take 232.4 and add 5 ounces, and you get 235.4 pounds; 232 to 235 pounds—its relative is pro rata; in other words 88 or 99%.

Q. What effect does that have on the rotation of the hand on a meter?

A. A gas meter measures volumes, there is a little mechanism in it which expands until it gets the bellows full, and when it gets full by a mechanical means reverses and discharges.

Q. Then it will expand with air the same as with gas?

A. Yes sir.

Q. Therefore, if air is passing through the pipes and through the meter, the meter keeps working?

A. Yes sir; as long as it has a pressure over atmospheric pressure the difference in intake and outtake, it will work.

Q. You know nothing as to the volume of air in gas when it is delivered?

A. I know there is none.

Q. Will you tell the court why it is that when no flame appears on a stove that the meter will continue to work?

A. It don't make any difference whether the gas is ignited 112 or not, if it passes through the meter, the meter will work.

Q. Suppose that you open the stop cock wide open and the meter continues to work, what causes that?

A. There is gas going through.

Q. But it won't burn?

A. That may or may not be on account of having the air mixer adjusted; all gas or anything else needs oxygen to burn.

Q. Presuming it always has been burning prior to this time, and by reason of a shortage of gas, and the mixture has never been touched, and won't burn when thrown open, what is the cause of that.

A. I would have to look at a specific case to see; it may be caused by the air mixture, too much or not enough oxygen, too much would blow the flame out.

Q. Take the case of one witness here who testified that the flame at one time was but $1\frac{1}{2}$ inch high, and still burning, and at another time the flame is $5\frac{1}{2}$ inches high, and the mixture had not been touched for more than 8 years, and the meter was registering just the same as when getting a $5\frac{1}{2}$ flame as when getting the $1\frac{1}{2}$ inch flame?

A. It would be due to a difference in pressure.

Q. Would you say that gas is coming through?

A. Yes sir.

Q. But it would not burn within five inches at one time as another, and still gas is coming through?

A. Yes sir; the pressure has varied, and unless you adjust the mixer it would not burn as well.

Q. Is that due to inferior gas?

A. No, it would not burn as well unless you had the same quantity of gas coming through.

Q. You say then, that there was less coming through?

A. Yes sir.

Q. When the flame is only a $1\frac{1}{2}$ inch high, there was less coming through than when there was a flame $5\frac{1}{2}$ inches high?

113 A. Yes sir.

Q. Then why did the meter run the same?

A. Because the meter measures volume irrespective of pressure.

Q. You collect, however, for this gas on the same basis at all times regardless of whether it will burn or not?

A. Yes sir, we try to furnish so many cubic feet of gas, and charge for whatever the meter registers.

Q. But when it does not burn you don't make any allowance for that?

A. If it does not we want to look into it; I will say that applies to every individual burner; when there is anything wrong with it we want to look into the trouble.

Q. Take a house with 13 burners, each connection of which has been connected with it what is termed a mixer, and those mixers have never been touched for 8 years, having heretofore given satisfaction at all times, save and except during cold spells, what is the cause of the meter running as rapidly when the flame is low and when it is high.

A. The rapidity at which a meter runs measures the volume going through the meter.

Q. Volume of what?

A. Gas.

Q. Is it so possible that it can get so thin that it will not burn at all.

A. I don't understand just what you mean.

Q. The gas will expand won't it; when the pressure is low does it expand.

A. A cubic foot of gas, atmospheric pressure is just so big, like a child's balloon which is elastic, 2 ounces pressure it will expand a certain distance, and under a five ounce pressure it will expand a greater distance.

Q. In other words, supposing I take a cubic foot receptacle and fill it with a cubic foot of gas under a certain pressure and draw off some of that gas, that reduces the pressure?

A. Yes sir.

Q. Does the receptacle remain full of gas?

114 A. Yes sir.

Q. Why is that.

A. Following the laws of nature.

Q. Then it is thinner when you draw it off?

A. In that sense, yes.

Q. If you put that in there under a 30 pound pressure, and you have drawn it off until it only has a 5 pound pressure, the volume is still as great, and still fills the whole receptacle?

A. Yes sir.

Q. Although you have drawn off as much as 25 pounds of it?

A. Yes sir.

Q. And that volume being there, if we would set a meter on top of that, and attach it to the meter, the meter would run just as fast?

A. Yes sir, the meter would measure volume irrespective of pressure.

Q. Then if you reduce it down it will get so thin you can't ignite it?

A. You could ignite any appreciable volume.

Q. What do you mean?

A. The flame from any one orifice, as big as a lead pencil requires a greater — to burn, together with the fact that the amount of air applied to that for combustion must be regulated to a proper proportion, when it comes down to the volume of pressure, I worked out the figures for you as between 2 and 5 ounces, the ratio is less than 1% difference between 2 ounces and 5 ounce gas.

Q. Is it possible for the Oklahoma Gas & Electric Co. to purchase natural gas from any other source than the Oklahoma Natural Gas Co.?

A. Yes sir. We have no contracts to prevent our doing so.

Q. You have never made any effort to do it?

A. No sir.

Mr. Selby:

115 Q. With reference to making provision for shortage of gas, like storage vats; has there been anything done along that line?

A. No sir.

Q. Are there systems of storage tanks in use?

A. Not that I have ever heard of.

Q. Is there any reason why natural gas can't be stored the same as artificial gas?

A. Outside of the cost of containers, no.

Q. Could a tank be used for storing natural gas?

A. Yes sir.

Q. Has your company, heretofore, had in this city a tank for storage purposes?

A. Yes sir.

Q. Where is it?

A. At the intersection of Robinson and the Frisco track we have a small tank.

Q. Has your company not had a large storage tank here?

A. Nothing more than what I have referred to.

Q. What is the tank you speak of used for?

A. Storage of fuel oil to be used in the electric plant to take the place of gas shortage.

Q. What length of time would that furnish a supply of gas; or what length of time would that tank supply gas if the natural flow should be reduced?

A. The capacity of that tank would hold a supply of about a half minute.

Q. So that it is not practical.

A. I said it was physically possible, irrespective of cost; if we were to put enough tanks out, it would be possible.

Q. What size tank is that?

A. It is 53 feet in diameter.

Q. Artificial gas companies use that kind of tanks?

A. Yes sir.

116 Q. Is there any difference so far as heating quality is concerned between artificial and natural gas?

A. Quite a considerable difference; artificial gas contains 600 to 650 heat units per cubic foot, while natural gas has 1,000 per cu. ft.

Q. What is the size of the pipe up to the city limits?

A. 12 inch; there are two of them.

Q. Reaching to the city?

A. Within about a mile of the city.

Q. You say it reaches within a mile of the city?

A. They come together there.

Q. Is there a meter at the terminus of the Oklahoma Natural Gas Co., line to indicate the quantity delivered to you?

A. No sir.

Q. Are there any facilities to determine the quantity of gas of quality that you get?

A. No sir.

Q. Do you, or have you had at any time, any method by which you could determine the character of gas delivered to you?

A. We had a test made some four or five years ago at the Oklahoma State University at Norman.

Q. From that time to the present you have no method for deter-

mining the character of gas delivered by the Oklahoma Natural Gas Co.

A. Yes, except we have a close gage on it ourselves; we use it ourselves and keep a very close record, based on Kilowat- hour Electric Unit.

Q. Your equipment, pipe and connections, such as they are, are different to those used by the general public?

A. In the electric plant?

Q. No, for any gas you get.

A. On the contrary we shut it off, and burn fuel oil, when there is a shortage.

Q. Assuming that the Oklahoma Natural Gas Co. should say we will deliver no more gas; under such conditions would provision has been made to protect the people of this city?

A. None whatever.

Q. Your company is at the mercy of the Oklahoma Natural Gas Co.?

A. Yes sir.

Q. Would it be possible to obtain an arrangement or agreement for you to have any other source of supply?

A. I don't know how it would be.

Q. Do you know that they would not do so?

A. No sir.

Q. Have you ever attempted to determine if they would do so?

A. No sir.

Q. Yet all the time your company has been furnishing gas to the citizens of Oklahoma City, it has known that the population of this city has depended on the Oklahoma Natural Gas Co. for gas?

A. Yes sir.

Q. Does your cards or literature show that?

A. The contract itself does.

Q. Does the Oklahoma Natural Gas Co. have any interest in the franchise which your company holds with this city?

A. No sir.

Q. Is your concern the exclusive owner of that franchise?

A. Yes sir.

Q. That being true, and yours being the only concern furnishing gas to this city, have you recognized the dependency of the entire population on your concern?

A. Yes sir.

Mr. Ruth:

Q. Having stated that a 30 pound pressure against the city was necessary to furnish an adequate supply to the pipes leading to the city; if that is always kept up to 30 pounds pressure, the citizens will obtain the quantity of gas as well as the volume?

118 A. Yes sir.

Q. If it is ever reduced below that, they will not receive the quantity, but will receive the volume?

A. Yes sir.

Q. Therefore, if it were possible for you to keep the pressure up to 30 pounds, the people will be obtaining better service?

A. Yes, on a cold day; it would not be necessary on a cold day like this.

Q. But if they did they would get better service than if the pressure was down to half an ounce?

A. Yes sir.

Q. If it was down to a half ounce pressure, it would be 1/60th of the actual quantity of gas?

A. Not at all.

Q. You said a while ago that the volume was the same and that the meter would rotate and measure volume?

A. Yes.

Q. You say that a gas container a foot square will contain the same volume, no matter how much gas goes out, even it goes down to a five pound pressure?

A. Yes sir.

Q. Therefore, if this court requires you to keep your pressure up to 30 pounds, the people will be getting better service than if it went down to five pound pressure?

A. Yes sir.

Q. I saw in the paper a statement to the effect that the pressure at your house was one half ounce during the cold days; did you make that statement?

A. No sir.

Q. If that statement were true and the pressure was down to a half ounce, you would still be getting your volume?

A. Yes sir.

Q. Even though the necessary pressure was 30 pounds?

A. The pressure I speak of is the volume against the city.

119 Q. But if you have 30 pounds pressure against the city you have the proper pressure?

A. Yes sir. A proper pressure for normal domestic service.

Mr. Selby:

Q. You are familiar with the rule of the Commission designated, and what is known as Rule #1028, as found on pages 444-5-6-7, of the reports of 1915 and 1916?

A. Not by page number alone; if I had one of the 19-5-'16 reports, I could say.

Q. Here is the report you ask for, you are familiar with the rule #1028 as asked about?

A. Yes, I have read this order.

Q. You have known of the existence of that order ever since its passage on March 11th, 1916?

A. Yes sir.

Q. Do you know that order having been made requires all gas companies to make adequate and suitable provision for adequate service in the way of furnishing gas for domestic purposes.

A. For domestic purposes exclusively as I remember the order.

Q. Now tell the court what provision your company has made to carry out the provision of that order.

Commissioner Humphrey: He has told you several times that he hasn't done anything.

Q. Is this a copy of the contract which you say you signed in agreement with the Oklahoma Natural Gas Co.

A. That is the form being in use all the time. Yes.

Judge Ames: Referring to Bulletin #88 Bureau of Mines, Compressor of Natural Gas, Page #62. I will ask you to state if the plant there described is a compressor plant.

A. That is my understanding of it.

Q. That is what is commonly known as a casing-head gas plant?

A. Yes sir.

120 Q. The extraction of gasoline from gas in a pipe line is a different process entirely?

A. Yes sir.

Q. The taking of gasoline from gas out of a pipe line is what is known as an absorption process?

A. Yes sir.

Q. So that those figures have no application to this case?

A. None whatever.

Q. You have been interrogated with reference to efforts made to secure gas from other sources; I will ask you if there are any other sources from which you could secure gas?

A. I know of no other source.

Q. Where is the nearest gas field to Oklahoma City that is not reached by the lines of the Oklahoma Natural Gas Co.

A. I imagine the Blackwell field north, and the Healdton field south.

Q. How far is the Blackwell field from Oklahoma City?

A. I should say it is all of 70 miles, but I don't know for sure just what the distance is. Mr. Bennett says it is 117 miles.

Q. About how far is the Healdton Field?

A. About 75 miles.

Q. There is no pipe line connection with either of these fields?

A. No sir.

Q. Do you know as a matter of fact, whether the gas from these fields is being piped out into other territory?

A. Yes sir; in the Blackwell field, it is being piped to Enid and some small towns that are on the line are being supplied. And the Healdton field is also being drawn from by towns in that part of the State.

Q. Did I understand you to say, I am not sure that I am correct that there are gas wells in the state where the gas is not being utilized?

121 A. I was asked the question if I did not know that there were wells in the state that were not being utilized, and I replied yes; meaning by that that I had seen from time to time when gas wells were capped off; in that sense there are wells I presume which are not being used.

Q. The Morrison field, until a few weeks ago, was in that situation?

A. Yes sir.

Q. The Oklahoma Natural Gas Co., has connected with that field?

A. Yes sir.

Q. Do you know of any other considerable supply of gas that is not connected up somewhere else?

A. No sir, in every one of these cases I have heard of the supply is negligible, and they would blow themselves out and did not amount to anything.

Q. Do you anticipate that the Oklahoma Gas & Electric Co. will be able to furnish gas if they are not supplied by the Oklahoma Natural Gas Co.

A. No sir.

Q. With reference to the quality of gas being supplied by the Oklahoma Natural Gas Co., I will ask you if any consumer in Oklahoma City, could not secure an analysis of that gas?

A. They undoubtedly could.

Q. An analysis that would disclose its physical contents?

A. Yes sir.

Q. You testified that you knew as a matter of fact that where the gas is delivered to the Okla. Gas & Elect. Co. at the city limits, that there was no air in it; do you know as a matter of fact that there is no air in the gas when delivered by the Oklahoma Gas & Electric Co.

A. Yes sir, I do; in the first place it would create one of the most dangerous explosives possible, I know of one case in West Virginia, where air was allowed to get in the pipes which caused an explosion that resulted in destruction 15 miles away up the main lines.

Q. You are able to state positively that there is no air mixed with the gas?

A. Yes sir.

Q. You state that the pressure is 30 pounds at the city limits, you don't mean that pressure is carried into the city?

A. No sir. We have a belt system entirely around the system into which that 30 pound pressure goes, we have 29 regulators around that system which regulates the pressure to the city; each regulator takes care of a limited territory, reducing the pressure down to from 6 to 6 ounces.

Q. You deliver it at 4 to 6 ounces pressure?

A. Yes sir.

Q. With reference to the meters, I will ask you to state if the meters are adjusted to measure gas at a certain pressure; would you use a meter in Mr. Selby's house of the same kind that you would use on the main line of 100 pound pressure?

A. No sir.

Q. What is the principal involved in the construction of one of these meters?

A. Essentially it consists of a bellows mechanism, and a clock work of chain or fear wheels, which when the pressure forces to the

point of its capacity the expansion releases the valves which spill over to the house side; it is an alternating movement; it is spoken of as a diaphragm; in the meter.

Q. It is regulated to measure the number of feet of gas going through regardless of the variation of pressure?

A. Yes sir.

Q. When you speak of the difference in quantity and volume what do you mean?

A. I tried to find out what Mr. Ruth meant by quantity; the meter measures volume.

Q. That is it measures the number of cubic feet of gas?

123 A. Yes sir.

Q. Take the case of Mr. Ruth; a certain receptacle for square and put in 6 ounces of pressure, the volume of gas would be a cubic foot, it wouldn't make any difference whether it was 6 ounces or five pounds, if but one ounce it would be greater under high pressure?

A. Yes sir.

Q. The measurement of that gas through a meter with six ounce pressure would be no more than with 4 ounce pressure?

A. Yes sir.

Q. What does the meter do?

A. It measures volume only.

Q. Regardless of the pressure the meter only determines the volume of gas passing through?

A. Yes sir.

Q. How many gages are there on a house meter; Mr. Ruth was talking about the gage showing two movements?

A. The ordinary house meter has four dials; they have a tally dial in one corner, and some have two tally dials; those four dials are merely multiples of one another; it reads from thousands to millions.

Q. What is the object of having four dials?

A. So as to pick up the accumulated amount of volume, whatever the meter may be, and won't have to go back to zero so to speak and begin over; just a question of subtracting to get the difference.

Q. Do you make the meters?

A. No sir.

Q. Where are they made?

A. They are made by Helme & McElvaney of Philadelphia.

Q. How long have they been in the business?

A. I imagine about 75 years, as long as the gas business has been here, and go as far back as the making of artificial gas started; they are a standard meter.

124 Q. What efforts do you make to keep your meters accurate?

A. We test them periodically by putting through what we call a prover which checks the volume recorded by the meter itself; these provers contain so many cubic feet of air or gas, whatever you choose to test with, and the meter is connected to that known volume and all of its contents are forced out of the original container through the meter which shows the difference that regulates the amount calibrated, the meter is passed on as correct.

Q. What are the rules of the company with reference to testing of meters for consumers?

A. We usually test the meter for the consumer without any charge. We invite them to be present, and see for themselves the test that we make.

Q. I suppose they do sometimes get out of order?

A. Yes sir. They are more apt to get out of order and run slow than fast; it is the nature of things to drag through use, and that retards the mechanism.

Q. You would be willing to test Mr. Ruth's meter for him at any time?

Q. Yes sir; we would be glad to, and let anybody else see the test made that wants to see it.

Mr. Reiss:

Q. When you say you made no effort to keep up the pressure to 20 pounds, you meant to say you had no way yourself of keeping that pressure up, but that you had to depend on the Oklahoma Natural Gas Company for that pressure?

A. I meant we had no mechanical means; we keep in close touch with the station or with the field; and advise them as far as possible in advance of conditions; if we notice a sudden drop in the line we immediately get on the phone and if possible find out what can be done to correct it; I didn't mean that we didn't make any effort to keep it up to that pressure, but meant that we had no mechanical means by which to do so.

125 Mr. Selby:

Q. Speaking of those meters correctly recording the volume of gas, in a case covering a period of six or seven days that the record of that meter showing a volume of gas substantially as would cover the same period at another time under normal conditions, do you mean to say that that meter would record correctly for those seven days when the gas was not burning?

A. In the first place that was not the case; assuming as witness testified in this case, that the showing by those meters was the same when there was no heat as the showing was the same so far as volume of gas passing through, and other times when there was a normal pressure, I mean the meter measure volume irrespective of pressure.

Q. If the same volume was going through at two different periods of time would not you get the same volume of flame?

A. The volume going through the meter under 6 ounce pressure is practically the same as under 2 ounce pressure.

Q. If there was a low pressure and there was no flame, no heat, yet the meter was recording at about the same rate as it does under normal conditions, what would you say about that?

A. With the same number of burners at the same distance, the amount recorded by the meter would be the same.

Q. In one case you would have heat and in the other you would not, how do you account for that?

A. The meter measures volume at different pressures.

Q. Where no flame results there would be no volume would there?

A. The volume would be the same.

Q. And every customer would pay for the same volume at the two different periods?

A. Yes sir.

Q. You say those meters operate only by gas volume, is it a fact that you can take those meters and operate them with a bicycle air pump?

126 A. Yes sir, air is gas; the mechanism can be operated by any gaseous pressure going into it. Put 1/16th of an ounce against it and it would not move at all.

Q. You say the Oklahoma Natural Gas Co. is your only source of supply?

A. Yes sir.

Q. Will they sell gas outright?

A. I don't know.

Q. You have never tried to buy gas directly from them?

A. No sir.

Q. When did the Oklahoma Natural Gas Co. commence making its connections with the Morrison field; when did they begin laying pipe?

A. It was in the summer.

Q. When were the connections made by your company with Yukon and El Reno?

A. The Oklahoma Natural Gas Co. ran their pipe to El Reno and in going by connected with Yukon.

Q. Didn't connect with you?

A. No sir.

Q. When was the connection made?

A. January a year ago.

Q. In your judgment if the connection between El Reno and Yukon had not been made, would it be possible to furnish Oklahoma City with the quantity considered adequate and sufficient?

A. Do you refer to the gas shortage recently?

Q. Generally, whenever it occurs?

A. I should not think taking that off the line would appreciably affect a town of this size; we have a population of approximately 100,000 and there is not over 10,000 in El Reno, and figuring on a household consumption it would not be over 1/10th added to what we are not getting, not over—1/10th added to what we are not getting, or 10%, something like 2.2 ounces.

127 Q. You think the quantity used by El Reno and Yukon added to the supply to Oklahoma City would not have had any material appreciable effect?

A. No, I think not.

Q. Under that theory a population the size of Oklahoma City taking enough gas to furnish towns of that size would have no material effect; like El Reno and Yukon?

A. It wouldn't make much difference.

Q. From what connection does Norman receive its supply?

A. They don't have any connection.

Q. Where does Guthrie receive its supply?

A. From the Oklahoma Natural Gas Co.

Q. Edmond?

A. From the same *course*.

Q. Where does Sapulpa get their supply?

A. I don't know who supplies Sapulpa.

Q. Where is Edmond connected?

A. The Oklahoma Natural has a line east and west at Edmond, the line that comes into this city runs north and south and passes by Edmond at a point opposite the line is taken off; it is entirely outside the jurisdiction of this line.

Mr. Ruth:

Q. You have stated in one instance that certain gas contained 960 B. T. U. heat units?

A. I quoted that as one sample of 7 or 8 tests taken by the government in the State of Oklahoma.

Q. Suppose that there was 960 B. T. U. in a cubic foot of natural gas under a 30 pound pressure, and the 30 pound pressure was reduced to a half ounce pressure, as the paper quoted, would it be reduced to 1/960th of 30 pounds?

A. The 960 B. T. U. was taken under atmospheric pressure.

Q. Assuming there was that many heat units under a 30 pound pressure, and it was reduced to a half ounce pressure you would have 1/960th of it, but you would have the same volume?

128 A. A cubic foot is a cubic foot, no matter under what pressure.

Q. So you would have the volume, but not the heat units?

A. Yes sir.

Q. You say the meter would register volume the same?

Commissioner Humphrey: We have a case with the Kansas Natural, involving the same proposition at this time.

Mr. Ruth: I tried to get a report of that whole affair, and also a report from the State Chemist at Lawrence, Kansas.

Judge Ames:

Q. You say those B. T. U. were taken at atmospheric pressure?

A. Yes sir.

Q. How much gas did you deliver to the people of Oklahoma City during that cold spell?

A. Prior to the connection with the Morrison Pool?

Q. Yes.

A. We estimated between 12 to 15 million feet; we delivered everything that came to us.

Q. You make it a rule to give preference to domestic consumers?

A. Yes sir.

Q. During that cold spell you cut off all commercial users?

A. Yes sir.

Q. You burn fuel oil?

A. Yes sir.

Q. What is the relative cost of fuel oil and gas?

A. Fuel oil at present market cost between four and five times what gas does.

Q. What is the ordinary pressure on the pipe line at the city gates?

A. From 200 to 250 pounds.

Q. What was it yesterday morning?

A. 220 pounds at 5 A. M.

129 Mr. Ruth:

Q. What was it yesterday noon?

A. 95 pounds.

Mr. Selby:

Q. You stated as to the average quantity of gas delivered to the consumers during these particular days, what is the normal quantity of gas delivered to consumers, the average? Under temperature, say 10 above?

A. We have no means of knowing of how much we deliver in one day; we read the meters every month.

Q. You testified as to the amount you did furnish during those particular days?

A. That was because we knew the pressure; the by-pass was open and nothing was held back.

Q. Can you get the same data as to normal conditions in the same manner?

A. We might by digging into our records; do you mean to go back two or three years?

Q. When the population was about the same as it is now?

A. The consumption is increasing every day.

Q. I mean as to about the amount of gas that you deliver to the consumers of this city under normal conditions?

A. I will have to ask you to define normal conditions; during the month of November the daily average for domestic purposes for the month was 5,452,200.

Q. Do you mean the daily average was about 1/3rd of the amount that you delivered during the cold days?

A. Yes sir. That is an average over 30 days.

Q. What I am trying to get at: you delivered from 12 to 15 million feet a day during those cold days now under consideration; I would like the court to know about what has been the average amount delivered on days or time where the temperature was the same?

130 A. I am not prepared to answer that question.

Judge Ames:

Q. Suppose you take the month of January—

Mr. Selby:

Q. What I want to know is how you can give this information as to those particular days and can't give it for similar days at a different time?

A. Because I haven't the data before me.

Commissioner Humphrey: During 1915 and 1916, Mr. Molinard that is an estimate capacity of that size line at that pressure?

A. Yes sir. On other cold days we were not using the capacity of the regulators, the by-pass was not open; and there was from 50 to 75 pounds back of that; you can't compare a whole month to a few days and get an intelligent comparison.

Mr. Selby:

Q. Did you ever call attention of the Oklahoma Natural Gas Co. to that condition?

A. Yes, night and day, morning, noon and night.

Q. During this time have you continued to add new subscribers and take on more new customers?

A. Yes sir.

Q. What is the policy of your company and the Oklahoma Natural Gas Co. with reference to shutting off a customer for refusing to pay their bills on account of being charged for gas they have not used?

A. We maintain we can legally ask the customer to pay for what has been measured through the meter.

Q. Assuming a meter should show so much, and a party sets around a gas stove with no fire they would not have to pay for something they didn't get, would they?

A. If the meter was recording, they were getting gas.

Mr. Ruth:

Q. Volume but not quantity.

Mr. Selby:

Q. So you trust your meter in preference to the word of a person sitting before a stove and sees that he has no fire, and knows that he is not getting gas?

A. Yes sir.

Q. That would be true if it were in your own home?

A. Yes sir.

Judge Ames: What part of your average daily delivery went to the domestic consumers during the month of January, 1917?

A. 11,351,500.

Q. Go back to November, 1917, and state the total average daily delivery for all purposes?

A. 17,463 thousand.

Q. During the cold weather in December, that we have been talking about, you testified that you cut off all boiler gas?

A. Yes sir.

Q. Take such consumers as the office buildings, what do you do with them?

A. They are classified as domestic users.

Q. In other words are not classified as manufacturers?

A. No sir.

Q. Did you cut them off?

A. No sir.

Q. You served all the restaurants in the business district?

A. Yes sir.

C. H. Ruth: As to complainants, we rest.

R. H. BARTLETT, being duly sworn, testified as follows:

Judge Ames:

Q. State your name?

A. R. H. Bartlett.

Q. You are an officer of the Oklahoma Natural Gas Co.?

A. Yes sir.

132 Q. What office do you hold?

A. Vice President and Treasurer.

Q. How long have you been connected with the Oklahoma Natural Gas Co.?

A. Since its organization.

Q. That was in 1906?

A. The charter was taken out in 1906; started business in 1907.

Q. Is that company supplying gas in Oklahoma?

A. Yes sir.

Q. What cities does it supply?

A. At the present time we are supplying, Muskogee, Claremore, and several towns in that district, Tulsa, Sapulpa, Chandler, Bristow, Guthrie, El Reno, and interurban towns on right of way between Tulsa and Oklahoma City, Tulsa, and Oklahoma City.

Q. From what source do you secure gas? Or rather from what fields?

A. At the present time we are not getting any large amount of gas from north of Tulsa; we have a field in the Osage Nation, but it is pretty well depleted, get gas from the Bixby field one west of Okmulgee and in the Cushing district; Stroud and the new Morrison field; we have a supply in the Blackwell field not connected with this line supplying this town.

Q. What was the general situation with reference to supplying gas in the state two years ago?

A. The supply two years ago was in very good shape as to the amount of open flow volume in the wells, particularly in the Cushing field.

Mr. Selby: Objected to as not definite and certain.

Judge Ames:

Q. What was the approximate open flow volume of the Cushing field at that time?

A. Something like 700 million feet per day.

Q. What is it now?

A. Available for use in our pipe lines it is less than 100 million feet per day.

Q. When did you build into the Cushing field?

133 A. In 1912, I think in the summer.

Q. What part of the gas from the Western and of the present system has been taken from the Cushing field?

A. Practically all the gas developed and transported in our line had gone west. Most of it at this end of the line is secured from the Cushing field in the last two years.

Q. When did you first begin to consider that the supply of gas was going down, and necessitate your locating in new fields?

A. Two years ago in December we realized that it was necessary to make some very extensive enlargement in our facilities.

Q. What did you do in December, 1915?

A. We ordered a large amount of pipe.

Q. I would like to get you to state the various things you have done about securing a further supply of gas than that which was then in reach of your pipe line system.

A. Two years ago this fall we realized that our pipe line system to Oklahoma City was inadequate; that is our trunk line; we hadn't really been short of gas up to that time, but it had been taking the capacity of our pipe line; there was a large volume of gas in the Cushing district and we decided to double our carrying capacity; the Directors on December 15th, 1915, passed a resolution to purchase 30 miles of 16-inch pipe, and to lay them from Oklahoma City and back on our present right of way, with the idea after we had completed the 30 miles of 16-inch pipe we would take up the 12-inch pipe line and relay that back, giving us double capacity for 60 miles, or particularly to the Cushing District.

Q. You mean the carrying capacity of the 16-inch line equalled the capacity of two 12-inch lines?

A. Yes sir; on January 1st, 1916, Watchorn drilled in a large gas well, in what is now known as the Morrison field; Mr. Crockett of the Fortuna Oil Co., had some interest in that well, and business relations with Mr. Watchorn closely adjoining this well; we opened negotiations with Mr. Crockett for purchasing the gas from this field early in the spring of 1916; shortly after they drilled
134 in this Watchorn well Mr. Crockett seemed to be willing to do business with our company, and it looked favorable for making a contract with him; at that time negotiations were carried out for several weeks over the telephone and I think two or three personal conferences between Mr. Crockett and Mr. Braden, President of our company; our order was on the books of the National Supply of Pittsburg for 30 miles of 16-inch pipe line gave us the option of changing the same amount of tonnage to diameter of pipe;

negotiations with Mr. Crockett reached the point where we thought he was about ready to close the deal; we even started a survey from Guthrie to the Morrison field to the Watchorn well; about that time Mr. Watchorn started a well on his own acreage; when we started our survey we changed our order with the National to 40 miles of 12-inch pipe in the place of 30 miles of 16-inch pipe with the idea of laying pipe from Guthrie; about this time negotiations with Mr. Crockett were broken off, he having decided that he would first develop his acreage; I believe he mentioned that he would rather develop his field and sell it as a whole rather than sell the gas; these negotiations were carried on from time to time between Mr. Braden and Mr. Crockett, but failed to make a deal, and we re-shipped what pipe had already come into Guthrie and Stillwater, and two or three other little towns on our old right of way, our original pipe line to Oklahoma City, and decided to use the 40 miles of 12-inch pipe to double back and increase our pipe line capacity; we laid that 12-inch line in the late summer and fall of 1916; in fact it ran pretty well into the winter before we got to Wellston, a distance of about 30 miles; around the first of January, 1917, before we completed that 30 miles of 12-inch line; about that time when we completed the line. In the meantime, additional wells, at least two more wells were drilled in this Morrison field; at the same time there

135 were two dry holes drilled north of the original Watchorn well; the producing wells were south; along about the same time there was a well drilled in what we call Engles, a small town near Stillwater, and another favorable showing at Perkins, south of Engles, it gave the ear marks of two new pools on a direct line between Wellston and the Morrison field; practically a direct line, owing to this additional development, particularly the well at Engles which Mr. Crockett has some interest in, in some manner we opened negotiations with him for the purchase of that gas at Engles; that well was quite a large well; we actually made a contract with Mr. Crockett at that time for the purchase of that gas; we made a survey to that well, and purchased an additional 10 miles of 12-inch line. At that time the idea was to take that gas from Engle over into our Cushing line so that later when the pressure went down we could put it in our Compressor station in the Cushing District; before that pipe arrived, in fact we purchased that pipe from the Kansas Natural Gas Co., as a sort of a loan, so we could get the pipe quickly; that pipe was shipped from some point in Kansas to Yale; at the same time a 6-inch line was laid to the town of Stillwater from this well.

Q. Was that laid by you?

A. No sir. The well had only been in use for a short time when it began to go down very rapidly to a point where we did not feel like investing the cost of 10 miles of 12 inch line on the strength of one well going down so low.

Q. You were advised that it would not be advisable to do that?

A. Yes sir. Then we opened negotiations with Mr. Crockett the 2nd time for the Morrison field. That was in the spring of 1917. We had our 30 miles of parallel line, double line up to Wellston; it

had given us considerable increase in capacity; we were still using the Cushing gas; the negotiations opened with Mr. Crockett the 2nd time looked favorable; the war conditions coming on, our Board met in April, 1917, and passed a resolution to order enough pipe with what we had in stock to reach the Morrison field.

Q. That was before you had contracted for the Morrison gas?

A. Yes sir. We open negotiations with the largest Tubular Mills in the Pittsburgh district for quotations and possible delivery; it was rumored at that time that the government was going to require a large amount of pipe; the U. S. Steel Corporation, through their agents refused to quote us, or promise delivery under one year; the Youngstown Sheet and Tube Co., the largest independent Tube Co. outside of the U. S. Steel Corporation, seemed to consider our quotations favorable and we finally closed a deal with them on the 7th day of May for 25 miles of 13 inch pipe; we had in stock then something like 25 miles of pipe; some we had left over from the 40 mile order and bought from the Kansas Natural Gas Co., which we did not use to go to Engle, and a few miles of surplus stock; we then made a survey.

Q. That pipe was purchased on May 7th?

A. Yes sir. Up to that time we had been unable to agree on a contract with Mr. Crockett.

Q. What promise of delivery did you have on that pipe?

A. The Youngstown people promised to make and deliver the pipe from time to time as they could get an idle furnace, they at first would make no definite promise as to a complete delivery after we had urged them repeatedly.

Q. What was the reason for delay?

A. They had already had requests from the Government for reports as to their capacity for making various sizes of pipes, and advised to hold themselves in readiness to fill government requirements in a very short time; the government was not very specific in their requests at that time, but enough so that the mills were under guarantee, in fact they told them that they would allow them to fill orders already booked, but not to make any definite promise for future deliveries until the government requirements were taken care of.

137 I was in daily communication with the factory and we felt that it might be a year before we could get a mile of pipe; we did not know what was going to happen; we were advised in the summer that they would probably be able to deliver 5 miles in May or June, so that we would get 25 miles of pipe by the first of October; they actually delivered 2½ miles in May and 3½ miles in June, and up to the middle of August we had received about 10 miles of the order; I will go back now to the spring of 1916, in April there was a large gas well drilled in what is called the Fox field and Healdton by the Gypsy Oil Co., owned by the Gulf interests; we had been buying gas in the Cushing, and Bristow of the Gulf or Gypsy Oil Co. when the second well was drilled in the Fox pool we opened negotiations with the Gulf people; I believe we sent a man down there to

test the wells and get a report in that district; we intended to make a contract with the Gypsy people for gas; they were to drill additional wells and develop enough gas to warrant the building of additional pipe lines a distance of about 75 miles; we had both of these negotiations under consideration at the same time; we took up with the Youngstown people the matter of buying additional pipe, and it was rather uncertain as to what we could do; the Gypsy people in order to make a contract with us, wanted to know something definite as to when we could put in a pipe line into the field; we couldn't give them any definite date; The Lone Star Co., of Texas had also opened negotiations with the Gypsy people for their gas; they had a line in that district, I don't know how far; although the Gypsy people were very friendly as to our business relations, they of course looked at the matter from the uncertain standpoint of pipe line from that field to Oklahoma City, and the certainty of the Lone Star proposition swung them in line with them, and they made a contract with the Lone Star people, but as I understand, there was a verbal agreement with some of their officials, it was contingent upon certain conditions if there is sufficient gas developed we may still be able to get in there.

138 Q. Did you finally make a contract with the Morrison interest, and if so on what date?

A. After talking with the Youngstown people, our definite order for 25 miles of pipe on June 4th, we ordered 45 miles additional 12 inch pipe, and the best promise we could get from them was delivery on or before April 1st, 1918; the order is still on their books; after we surveyed our right of way from Wellston to the Morrison field we found that we were three miles short of 12 inch pipe; in July we notified the Youngstown people we would require three miles additional 12 inch pipe, which they agreed to furnish as soon as they could get to it. Going back, up to the middle of August we had about 35 miles of 12 inch pipe either in stock or on the way; we made a contract with the Braden Company to construct 53 miles of line to the Morrison field; our negotiations with Mr. Crockett were finally consummated on July 3rd about; I am not certain as to the date; it was several weeks after the pipe was ordered; with 35 miles of pipe on hand we were able to make a contract for the laying of the line even with 18 miles of indefinite delivery; we did not know when we would get the balance of the 18 miles; we again took the matter up with the Youngstown people; Mr. Braden was on a committee, or a sub-committee connected with the Council of National Defense at a convention the latter part of August, he met Mr. Campbell and talked with him in regard to this 18 miles of pipe, and Mr. Campbell suggested that we take it up with Washington officials, and promised to do everything in his power to get that pipe for us, and said he would report to us as soon as he got back, which he did; they then made a definite promise of delivery of 10 miles in September, and the other 8 miles in October. That was the first time that we had a definite promise of what they would do; we assumed that we would get that pipe and went to work on the line a little after the middle of August.

with equipment capable of laying one mile a day as long as they had pipe.

139 Q. How many miles were to be laid?

A. 53.

Q. When did you start?

A. 25th day of August; and figuring on that basis we would have finished before November 1st; we did lay a mile a day for some time; then our contractor notified us of labor troubles and that he had been besieged by other contractors looking for laborers; from his own statement he had to raise his wages to his men twice in a short time in order to hold them and then he was unable to hold them all; the gas company to the north were rushing a large line to the Blackwell field who were hiring all the men they could get; there was also another large line under construction to St. Louis; that company hired men regardless of price; from hearsay we understand they were paying from \$3.50 to \$4.00 per day; the contractor began to worry for fear he was going to run out of pipe; Mr. Molinard as well as ourselves were doing considerable worrying; I came to Tulsa from Pittsburgh on the 27th or 28th day of September, and investigated the condition of the line myself at that time, and about the 1st of October we had some 21 or 22 miles laid complete; the deliveries in September were cut in two; they only shipped 5 miles instead of 10; we took the matter up with the Youngstown people again by wire; our officials at Pittsburgh took it up in person with them; they said they absolutely could not fulfill their promises, not only on account of government contracts, but they were only running half time due to a shortage of coal, in fact they did not have enough coal at that time for domestic purposes; along in the middle of October we realized that we were going to fail to complete our line; at that time we had moved up the date to complete the line to December 1st; that was when we hoped to complete it; we had hoped to complete it by November 1st; we thought we could complete the line by December 1st, and several of our officials made a special tour of inspection over the field in October, a little past the middle of the month; 140 they made certain tests on the pipe line system, that is we had a duplicate pipe line from Depew Junction to the Cushing field to our compressor station, one 10 inch and one 12 inch line; the 10 inch line had been laid the year previous in our scheme of paralleling the trunk line to Oklahoma City, in this inspection trip they shut off the gas on the 10 inch line, and found that the reduction of pressure was very slack; the 12 inch pipe line able to take care of all gas in that field they decided to lift the 10 inch line and ship it to the Morrison field to complete that line; we took it up with the contractor, and he said he couldn't get the men to lift this line, and advised me to look elsewhere, which we did; after negotiations with two or three different firms in Tulsa we made a contract with Williams Bros., of Ft. Smith, to take up this 10 inch line at an extremely high price and ship to the Morrison field; I believe they got organized and started to work about the 25th day of October, and in six days the first pipe was pretty well on the road to the Morrison field; they had a congestion in the West Tulsa yards which delayed

the movement of that pipe; we took the matter up with the Frisco officials to see if we couldn't get this 10 inch pipe delivered; they assured us they were doing everything possible to move those cars; the pipe; we were still after the Youngstown people, and about Dec. 5th had word from them that they hoped to run 5 miles of pipe; in the meantime they had not made a foot of pipe since the middle of September; I think there was one stray car load of 12 inch pipe that reached us during the month of October. When we received word from the Youngstown people that they would make another 5 miles of pipe to be shipped out November 5th, I took the matter up with the "Jenks" (?)—commonly called spotters, who have a large system of men in all large congestions of freight over the U. S. to spot cars and try to keep them moving, and entered into a contract with them to keep these pipe moving from Youngstown to the Morrison field; any time one of those cars were thrown on a siding they were to have a man there to find out the reason why it was put on the siding and see that it was put on the next train going on which they did; they spotted those cars over 300 different movements as I remember it, it cost us somewhere around \$500.00 for that service; at the same time we tried to borrow pipe from a company in Wichita and from the Kansas Natural Gas Co., we found some pipe in Kansas that we could have purchased, 2nd hand pipe which had been in the ground eight or ten years, but would not be able to get it any quicker than the pipe we were lifting; our pipe began to arrive at Morrison on or about the 10th day of November, we hauled it out and strung it along the right of way and the men watching for every truck load in the meantime we were receiving daily reports from the Jenks Traffic Bureau letters and telegrams from the spotters from Youngstown clear down into Oklahoma giving the number of the cars and the points they passed at such and such a time of the day or night. I don't remember the date the first car load was received, but it was a little under 30 days from the time it left Youngstown. They made about four miles of that five miles of pipe and shipped out something over $2\frac{1}{2}$ or possibly 3 miles, when the government put an embargo on cars, and the balance was left standing on the switch yards in the Youngstown mills; some of that pipe reached Morrison in time to go into that line before we used all of that 10 inch pipe. I believe there is about 8 miles of that 10 inch pipe, and the balance is 12 inch.

Q. Have they ever completed that shipment?

A. No sir.

Q. You had not been able to lift this 10 inch pipe and put it on the Morrison line?

A. No sir.

Q. Was the work in laying this pipe delayed caused by this blizzard and this suffering in Oklahoma City?

A. The work was delayed by a heavy rain storm in Oklahoma City November 30th, our ditch was open all the way to the wells and it froze and the walls of the ditch caved in; we really had to reditch them, the workmen had to pick that ice and frozen dirt out which had caved in three or four feet back; all of this caused delay.

- Q. An adjustment had to make for the extra labor?
A. Yes sir.
Q. Then the cold weather followed which delayed the work another two or three days?
A. Yes sir; to my certain knowledge the men refused to go out at all; but they delayed us more or less.
Q. When did you finally get the connection made?
A. I think it was Saturday noon, December 15th.
Q. When was gas turned into the line?
A. December 18th.
Q. You are now getting gas from that field in addition to the other sources of supply?
A. Yes sir.
Q. Was there any way by which you could have secured an extra flow of gas during that time?
A. No sir.
Q. Were you delivering all the gas available either by your own construction, or by purchasing it?
A. Yes sir.
Q. Was there any discrimination during that blizzard in deliveries?
A. No sir, we delivered no more to one town than to another.

Mr. Selby:

- Q. You discovered two years ago that it would be necessary for you to add to your facilities, and to make further provision for gas?
A. It was very apparent at that time.
143 Q. You did discover it at that time?
A. Not all at once, in the fall of 1915, we knew our line would not be adequate to take care of service all over the system.
Q. What towns were you supplying? At that time?
A. Everything except El Reno and Yukon.
Q. When did you add El Reno?
A. After we decided to parallel our system.
Q. I want to know the month?
A. I will tell you as near as I can remember; Mr. Molinard has already said—
Q. Tell the court when you made your arrangements to supply gas to El Reno and Yukon?
A. I don't remember just when.
Q. Was it before January of last year, 1916?
A. Our Board passed a resolution the 15th of December to double our pipe line capacity from the Cushing district, I think we started in the spring, April, 1916, and finished September 16th.
Q. At that time, and prior to that time, you had discovered that it would be necessary to make additional arrangements and supply more gas by reason of the increase of population?
A. Yes sir.
Q. After having discovered that you made these additional connections, El Reno and Yukon?
A. Yes sir.

Q. What size pipe did you lay?

A. 8 inch.

Q. At the time that you discovered that it would be necessary to make additional arrangements, with what field were you then connected?

A. All the fields I mentioned a moment ago with the exception of the Morrison field, and the field west of the Okmulgee field.

144 Q. Were there any further development in those fields at that time; any new wells brought in?

A. I think so.

Q. By the same concerns from whom you were purchasing your gas?

A. Possibly so.

Q. Do you know how many wells have been brought in in the field since you discovered you had to make further arrangements?

A. No sir.

Q. Will you state to this court that there were no producing wells brought in that would be available, since you decided you would have to make the additional arrangements?

A. Do you mean with the Cushing field? You understand we connect up with wells in any field, at any time we can get them, and all the wells we can get a hold within a reasonable distance of our pipe lines, which in the judgment and management of our company is practicable.

Q. If you knew two years ago that you would have to make arrangements for new supplies, what had been done towards securing additional supplies?

A. At that time we were connected with between 7 to 800 million cubic feet of gas, and had a great deal more than we could transport. We arranged to double our pipe line facilities all at one time in the course of two, three or four months entailing great expense, the city of El Reno had been after us continually urging us to make gas connections with that town; they could not understand why Oklahoma City could have gas and they could get nothing, we intended originally early in 1917 to lay this line to El Reno, but conditions were such that we could not.

Q. Two years ago when you discovered you didn't have adequate facilities, you discovered you didn't have the gas?

A. Yes sir.

Q. Following that you began negotiations with Mr. Crockett for further gas territory.

A. Yes sir.

145 Q. You say that there was a large amount that was available; you didn't have that under control?

A. No sir, not entirely.

Q. How much did you have under control?

A. There was enough large pipe line in that field——

Q. What line?

A. The Wichita pipe line.

Q. Did they get control of that surplus gas? You mean by having that gas tied up by contracts so that you could not use it?

A. We found we couldn't tie up gas in that manner. We were

Q. You bought just what you could use or send through your pipes?

A. Yes.

Q. You mean from day to day?

A. We only bought what we could put into our pipe line.

Q. Did you make any use of any of that surplus gas in any way?

A. Yes, we had one small plant in the Cushing field, in operation probably a year previous to that.

Q. You say that you have a process by which you were taking gasoline from the gas as it went through the pipes?

A. You understand the gas was in the pipe line all the time.

Q. Your principal business then was extracting that gasoline from the gas?

A. No, we were producing and transporting natural gas.

Q. Wasn't it the practice to extract the gasoline before putting it into the pipe line?

A. At that time that was the only plant on our system, and I think the first of that kind in the state.

Q. Since that time, hasn't it been your uniform practice to take gasoline from the gas before putting it in the line?

A. Yes sir.

Q. Do you take gasoline from all the gas that comes to this city?

A. A large part of it.

Q. What amount of gas per 1,000 cu. ft.?

A. I can't say.

Q. Did you know what it was at the other end?

A. Yes, we have several different plants over the state.

Q. What has been the amount of gasoline per 1,000 cu. ft.?

A. We are not measuring all of that gas in and out.

Q. Home many of those stations on the lines?

A. We have various branch lines coming into the main trunk line, that is just one on the trunk lines.

Q. How many of those lines would the gas pass through from the wells until delivered?

A. Part of the gas would be passing through two stations part of the time, and part of the gas would be passing through three stations part of the time and some of it is not going through any stations.

Q. By making the contract for the purchase of gas don't you first make a test of the gas that is offered to you, for the purpose of finding out whether or not it does yield gasoline?

A. Yes sir.

Q. And if the gas does not show a high grade, you don't purchase it?

A. No sir, we don't refuse to buy any gas that we could get into our line.

Q. At the time you discovered you would have to make other

arrangements for pipe lines two years ago what amount of gas was available other than what passed through your line?

A. That would be hard to tell.

Q. You have an idea, don't you?

A. You mean open flow, the volume of gas available?

Q. Available anywhere for consumption?

A. We were taking out of the Cushing district to the full extent of the pipe lines' capacity.

147 Q. How much was available in excess at that time?

A. We had connected to our pipe line system from 7 to 800 million feet, and were using all that the law would allow at 25%.

Q. Was there twice as much available as you were using?

A. At one time after the development of the McMann Pool south of Shamrock in the Cushing district, together with the gas in other fields, we probably had twice as much gas as our line would carry.

Q. Who controlled the wells that produced that gas?

A. Various producers.

Q. How many pipe lines reached those wells in that territory?

A. Only two trunk lines, ours and the Wichita Line.

Q. Are you able to say in what respect the consumption in Oklahoma has increased in that period of time?

A. I could not tell off hand.

Q. You watch those things pretty close, don't you, the consumption and demand?

A. Yes, but we can't carry figures of that kind in our head.

Q. Just give the court an idea.

A. I would say the population of Oklahoma City has increased 20%, but the consumption would not increase accordingly; I have already testified that at that time we were connected up with from 7 to 800 million feet of gas, and that it has gone down to less than 100 million feet.

Q. Answer my question: Do you mean to say those fields have been depleted and that there is no available gas?

A. I told you how much they had been reduced.

Q. Have any new wells been brought in in those fields?

A. Yes, occasionally.

Q. What is the total available supply in those fields compared to two years ago?

A. My answer to that would be merely a guess.

Q. What is the available supply in those same fields for your company as compared to the available supply two years ago?

148 A. In July 1917, in what we call the Cushing District and Shamrock field just south, there was 99 million feet with a rock pressure of from 115 pounds to 375 pounds, in November 1917 we had approximately 65 million feet with a rock pressure at Shamrock of from 100 to 170 pounds, there was one well that showed 250 pounds.

Q. As to the other fields was there no available supply?

A. There were no new wells coming in; we are connected with every available supply in that field that we can buy gas from.

Q. What available supply did you have from other fields during that time?

A. At Bristow in July 1917, we had 105 million feet, at an average rock pressure of 145 pounds.

Q. When did this marked decrease become apparent?

A. There is always a marked decrease.

Q. In the Cushing District and the Shamrock District—

Commissioner Humphrey: After the first well was drilled in the first conservation agent was put on; the rock pressure went down the day the well was blown; that has been the history of these gas wells all over the state.

Q. Do you mean to say the connection you had prior to going into the Morrison field was insufficient for your needs?

A. We didn't get one half through paralleling our lines until we realized the Cushing field would not give the pressure we would have to have.

Q. You mean it was insufficient to fill the demands made upon your lines?

A. Do you mean the service to Oklahoma City?

Q. Prior to your connection with the Morrison field were you supplied sufficient gas to meet the requirements of your customers?

A. It was failing.

Q. You say it was failing and that you didn't have an abundant supply.

A. No sir.

Q. When did you discover that you didn't have a sufficient supply?

149 A. I stated that we were taking every available supply that we could get, going into this Morrison field and the Fox and Healdton field as well.

Q. Is the Morrison field the only field to which you may look for additional supply?

A. I testified as to the Fox and Healdton field?

Q. I did not ask you about that.

A. All the fields where we have any connections we have all the wells connected up that we can get.

Q. How much short are you of the demand made on your lines?

A. That would be hard to say, where there is a heavy demand on our system we are probably delivering from 75 to 80 million feet, and to give good adequate service we could use from 15 to 20 million more.

Q. Did you know in July 1917, that you would not be able to furnish an adequate supply to your customers in Oklahoma City until you connected up with the Morrison field?

A. Yes sir.

Q. Did you ever give notice to the Oklahoma Gas & Electric Co. that there would be a gas shortage?

A. I don't know that there was any written notice.

Q. Do you know whether or not they had knowledge that you

would not be able to supply them with gas until you were connected with the Morrison field.

A. It was generally talked between them and us last summer that it would be necessary to finish this line.

Q. Even though you knew there would be a shortage you were taking on more customers every day, and even built a line to El Reno and Yukon?

A. We hoped to get more.

Q. You knew at that time that you would have trouble in getting pipe to make the connection with the Morrison field?

A. We did not, no sir.

Q. You said awhile ago, that in May the government commandeered pipe?

150 A. Yes sir.

Q. Then if that was true you had knowledge at that time as early as in May last year, that you would likely not be able to get the pipe to make the connection in the Morrison field?

A. As I stated——

Q. Answer my question, yes or no.

A. What do you mean by knowledge?

Q. You knew that you would have trouble in getting pipe.

Commissioner Humphrey: That has been covered pretty thoroughly with reference to taking on more customers. I want to ask whether you had appraised your agent, the Oklahoma Gas & Electric Co., that you would likely not be able to supply adequate amount of gas. You knew before taking on additional consumers that you would have to supply your present demand.

A. We couldn't supply one man, and not supply his neighbor.

Mr. Selby:

Q. Had you knowledge that the Oklahoma Gas & Electric Co. had a supply which was inadequate supply, and that the pressure was very low all the time?

A. As to that I would not say.

Q. Did your company have knowledge of that fact?

A. Yes.

Q. Has your corporation any interest in the franchise held by Oklahoma Gas & Electric Co.?

A. Nothing more than our contractual relations with the Oklahoma Gas & Electric Co.

Judge Ames: The contract will disclose the relations.

Mr. Ruth:

Q. Do you sell gas outright to any of these distributing companies over the state of Oklahoma?

A. Yes sir.

Q. What cities?

A. We have been selling to Sapulpa, under a temporary arrangement to help them out because of a gas shortage.

Q. Is that the only one which you sell to outright?

151 A. We have sold to Bristow at several times.

Q. When did you make temporary arrangement with Sapulpa?

A. Some two or three years ago.

Q. You don't sell outright, to the company in this city?

A. No sir.

Q. Judge Ames: The contract will show that.

Commissioner Humphrey: We have a case in the Supreme Court now in which Judge Ames holds one way and the Commission holds another: if he says yes or no, it is all the same.

Q. You could shut off the gas from Oklahoma City at any time?

A. No sir, I don't think so. Not as long as we had any.

Q. You are under no obligations to the citizens of Oklahoma City, you hold no franchise.

A. We have one at Tulsa.

Q. You haven't one at Oklahoma City?

A. No sir.

Q. The Oklahoma Gas & Electric Co. has no visible supply other than that supplied by the Oklahoma Natural Gas Co.?

A. I think not.

Q. They have no pipe line outside of the city?

A. Not that I know of.

Mr. Reiss:

Q. The question of taking on more business, the Commission has ordered this company and other companies to take on more customers.

A. Yes sir.

Mr. Ruth:

Q. Who holds the contract by the customers?

A. The Okla. Gas & Electric Co.

Q. Only as agent for you?

A. Yes sir.

Commissioner Humphrey: If there is nothing further this case will stand continued until Friday, January 11, 1918.

152 Thereafter, on January 11, 1918, the hearing in said causes before the Commission, held on January 2, 1918, was resumed, and the following testimony introduced:

153

Corporation Commission of Oklahoma.

Causes Nos. 3188, 3192, 3197.

Continuation of Hearing Held January 2, 1918.

Cause No. 3188.

In re COMPLAINT OF CHARLES H. RUTH

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL
GAS Co.

Cause No. 3192.

In re COMPLAINT OF T. F. DONNELL

vs.

OKLAHOMA GAS & ELECTRIC COMPANY.

Cause No. 3197.

In re COMPLAINT OF CHAS. B. SELBY, County Attorney, et al.

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL
GAS Co.

Hearing Held January 11, 1918, Before Commissioner Humphrey.

Appearances:

For Oklahoma Natural Gas Co., Judge C. B. Ames.
For Oklahoma Gas & Electric Co., Paul Reiss.Transcript filed January 16, 1918.
A. E. Endres, Reporter.C. R. BURK, being called as a witness on behalf of defendants,
after being first duly sworn, testifies as follows:

By Mr. Ames:

Q. State your name?

A. C. R. Burk.

154

Q. What is your business?

A. Superintendent of the Gasoline Production Department
of the Oklahoma Natural Gas Co.

Q. How long have you been in charge of that department?

A. I have been with the company for over a year, and the department was just established about two months ago—particularly as a department.

Q. How long have you been familiar with the natural gas business?

A. Well, I have been a refiner for about 25 years and familiar with the natural gas business for the last ten.

Q. How many absorption plants are on the lines of the Oklahoma Natural Gas Company from Oklahoma City and El Reno towards the east?

A. Four to-day.

Q. In addition to that is there one on the Enid line?

A. Pardon me—there was one at Oklahoma City which I did not include; that would make five instead of four.

Q. Is there one on the Enid line?

A. Yes.

Q. Is that one of the five?

A. No.

Q. The Enid line is disconnected entirely from the balance?

A. Yes sir.

Q. About what is the quantity of gasoline taken from the main lines of the Oklahoma Natural per thousand cubic feet of gas?

A. The average to-day on these lines is from three-fourths to a pint and a quarter per thousand cubic feet.

Q. Are you familiar with the origin of the business of absorbing the natural gas from gasoline—or of absorbing the moisture from that gas?

A. I am.

Q. In your own way, will you explain that?

Q. Well, ever since the industry commenced there has been a great deal of trouble with water and moisture and gasoline. The
155 collecting in the pipe lines carrying the natural gas. The water and gasoline can be removed partially by drips which we place at different points on the pipe lines but these drips, particularly when the pressure becomes low, would fail to properly remove this moisture and the gasoline. The gasoline would not only rot the couplings—the rubber in the couplings—but would also collect in the meters and prevent their working properly. So the companies tried various devices until in about 1902, I think the first what might be called real dehydrating or gasoline removing plant was erected on the Indiana Gas Company's lines to Chicago and that was a tank through which the gas was passed in which ammonia was directly expended. The gas was chilled by passing through these tanks and the water and gasoline collected and drained off and the gas returned to the main line with this water and gasoline removed.

Q. Prior to that time the drips were arranged to get rid of the liquid—water or gasoline?

A. Yes sir.

Q. Was that gasoline that was taken out through the drips utilized?

A. No, there was no demand practically for gasoline.

Q. The purpose then was to get rid of the liquid?

A. Yes sir, to prevent its rotting the rubbers and building up pressures in the pipe lines and to remove the water as well. They removed from 50 million cubic feet as much as 80 barrels per day and some of that was burned under the boilers at that time but not to amount to anything. And in 1905 I think Mr. Dennis Hastings found the same trouble in a large quantity of gasoline blocking the pipe lines on the new lines at Hastings, West Virginia, so he tried to devise a meter which was also an absorption process but then there being no demand for gasoline and at about that time the
156 Standard Oil Company took it up and Mr. Sabolt applied for a process, but still, as there was no demand for the gasoline the companies hesitated to spend the money to put up these large plants to take out all the moisture and gasoline, and this continued until about 1912 to 1913 when the great demand for gasoline arose and the price justified the erection of these plants, then they were put in all over the country, until the last year some—I think 30 to 40 million gallons of absorption process gasoline was produced.

Q. That is in the United States?

A. Yes, in the United States, but even this amount, on account of the demands of the present war it is believed will not be sufficient to supply the war demands for the coming year.

Q. Do you know whether or not at this time the use of absorption plants along the natural gas pipe lines is practically universal?

A. Yes sir, it is practically universal.

Q. You speak of the Government demands, is there any particular government demands for this particular grade of gasoline?

A. There is.

Q. Do you know what use the Government puts it to?

A. Aeroplane service.

Q. What is the quality of gasoline that is taken in this way?

A. It is one of the highest which can be made by a refinery, but all the refineries make is put into their regular grade of gasoline.

Q. Will you explain the effect—the physical effect—on the pipe line and transportation system, of this liquid in the natural gas, both the water and the gasoline?

A. It collects particularly in cold weather at certain points, causing a rise in pressure and blockage of the pipe line and has to be drained off if the transportation of gas is to be continued.

Q. It interferes then with the transportation of gas through the pipe line or makes an obstruction?

157 Q. What is its effect on the rubber couplings?

A. It eats out the rubber.

Q. How close together are those couplings—every joint?

A. Usually.

By Mr. Walker:

Q. Have you ever known of an explosion to result from the collection of gasoline in these pipe lines?

A. I do not know as I ever heard of an explosion, just from gasoline alone.

Q. Is there any relation between the topography of the land over which the line is laid and the frequency in which you put in these absorption plants? Do you understand?

A. No, I don't quite—

Q. What I mean is this: If your line is over rough territory, or territory going up and down hills, does it require more of these absorption plants to take care of your gas than in a level country?

A. A proper plant should remove the gasoline, and you put it as near the wells as you can—that is, where the gas is received.

Q. And if you have your absorption plants at the source of your gas then you do not need any others along the line to take care of it?

A. You don't providing the first plant is efficient.

Q. Now do we understand that these absorption plants which take out the gasoline also take out the moisture?

A. They do.

Q. If the first plant, or the plant which is installed at the source of the gas, is efficient will that prevent moisture from collecting in your pipe anywhere along the line?

A. It will take out the moisture which comes from—the first moisture which is in the gas.

Q. And moisture will collect in the pipe?

158 A. Under certain conditions.

Q. Regardless of whether there has been a plant at the source of the gas?

A. Not nearly as much.

Q. What is your practice? To install only the one absorption plant at the source, or do you install them along the line generally?

A. We have on two or three of these different plants and the reason for same has been that high pressure gas has gone in ahead of the wells along the line—ahead of the compressors in some instances. In other words we found we could put up another plant with benefit.

(Witness excused.)

159 Dr. EDWIN DE BARR, being called as a witness on behalf of defendants, after being first duly sworn, testifies as follows:

By Judge Ames:

Q. State your name.

A. Edwin De Barr.

Q. What is your business?

A. Chemist at the State University for the last more than 25 years and Director of the School of Chemical Engineering.

Q. Have you had occasion to study the natural gas as a chemical product; also as a natural gas industry of this state?

A. Yes.

Q. Are you familiar with the type of plants, known as the absorption plant, that is used on natural gas pipe lines?

A. Yes.

Q. Will you explain the effect on the pipe line itself of having gasoline in the natural gas.

A. The effect on the dry natural gas has no appreciable loss, but when moisture is present and the gasoline goes into the pipe it tends to corrode the pipe on account of the moisture and to eat out or dissolve the rubber in the connections on the pipe, as gasoline is an especially good solvent for rubber.

Q. Considering the subject of extracting this gasoline and water from the natural gas, I will ask you to state whether, in your opinion, it is advantageous or disadvantageous to the physical property of the line itself to extract it?

A. For the physical property it is a great advantage to extract excess gasoline in the natural gas.

Q. Now will you explain to the Commission just what the advantages are from the physical standpoint?

A. The main point—first, we might say, one of the main points, is the protection to the property of the company controlling the line in keeping it in better shape and in preventing blowouts of the gas at the joints that form the connections that are made in the modern gas line and the advantage physically, is to deliver at the terminus of it a uniform product, which cannot be done if the gasoline and moisture is left remain in the pipe or in the gas in its way or conduct from the well to the consumer. And it also obstructs the passage of the pipe, because wherever there is an elevation or pressure put upon it this gasoline will collect and wherever there is a dip in the line it will obstruct the passage of the gas in the pipe line.

Q. And the removal of it removes that obstruction?

A. Yes.

Q. What effect on the transportation of the natural gas does cold weather have where the gasoline content is not extracted?

A. It condenses the gasoline gases, or the gases that forms it condenses them into a liquid and it runs back to the lowest point of the pipe to which it has access and if that access is at the bottom of the grade, fills up the pipe and obstructs the passage of gas.

Q. Viewing the industry as a commercial business, what would you say as to whether or not it is a disadvantage to the general public to have this gasoline saved for commercial use as against having it remain in the natural gas?

A. Well, it is a great advantage to the commercial interests, and besides, you could not get your gas through if you did not remove it; you would obstruct and fill up your pipes, but to have it removed, besides the physical benefit to the plant, is the great saving in the consumption of fuel of gasoline that is needed for particular purposes to a vast amount.

Q. Now from the standpoint of the consumer in Oklahoma City, for instance, would you say that the extraction of the liquid contained is an advantage or disadvantage to the consumer?

A. It is an advantage to the consumer in that it furnishes a uniform gas to him and then requires no particular attention to the government of the flame at the point of burning. If you take the

161 gas and let it come through the pipe in a uniform way, stripped of this gasoline and moisture content, you can then more easily regulate his flame to get what he wants for heat purposes.

Q. Does the extraction of the gasoline content and the water that may be in the natural gas make it an inferior fuel?

A. Practically no reduction—possible there might be a reduction of from 1 to 25% in its B. T. Unit value, that is, its burning unit value. My authority for stating that is Bulletin No. 120 published by the Fuel Administrator of the United States, Mr. Burrall.

Q. Do you know Mr. Burrall?

A. I know him personally.

Q. What do you know of his standing, experience and reputation?

A. It is of the very highest as he is appointed by the United States Government by a certain department of the Division or bureau of Mines to take charge of the fuel and gas, and a man of the very highest of scientific attainments.

Q. From a chemical standpoint, what is the composition of natural gas?

A. Mainly what we call Methane or Marsh gas with some of the highest paraffin homologues or members of the refined paraffin series of heat carbons.

Q. Does the absorption process extract from the gas any of the Methane?

A. None whatever. There is a little difference of opinion but if it is, it is exceptionally small, if you will keep it under repression and compression of sufficient intensity, but under ordinary circumstances in the administration of the absorption, no Methane is retained, at least in the gasoline, I mean, but all delivered as gas that passes through.

Q. And the Methane contained in the natural gas is the portion of it that is desirable to serve to the consumer?

A. Yes, it constitutes from 70 to 95%, the most natural gas of the dry variety.

Q. In the manufacture of artificial gas is anything done there to extract these same ingredients before it is put into commercial use?

A. Always employed in the extracting certain of these highest homologues I have spoken of, of the paraffin as well as benzol, or what we commonly call benzine——

Q. In your opinion then as a whole, it is advantageous from the standpoint of the physical property, from the standpoint of economy and for the consumer likewise?

Q. Yes, for both.

By Mr. Walker:

Q. You have described the advantage from the standpoint of practicability for transporting gas of extracting the gasoline, is there any advantage from the standpoint of safety to the pipe line?

A. Yes, to the pipe line in that it protects its joints but if you

mean safety to person and life, why yes, because it would blow out at these joints and come in contact with the air which, if a flame would be burning anywhere would make it dangerous to pass along the line.

Q. Would there be any danger of explosion?

A. Yes, if it comes in contact with the air.

Q. With these vapors and oils or gasoline collecting in a depression of the pipe somewhere, would this cause an explosion?

A. Now a real explosion but what you might call a bursting out by compression of the line—blowout by compression. It would blow out at the joints.

Q. Then from the standpoint of the consumer in the various cities which would be supplied with gas from the pipe line, it would be an advantage to have this gasoline extracted so that the pipe could be kept clear?

A. Yes sir.

Q. You have given some of the advantages to the consumer from the extraction of gas, for the use of this gas in the stove does the taking out of gasoline reduce the possibility of smoking and things of that sort?

A. Yes, you take the gas that is rich in these higher heat
163 carbons it is smokey. Methane is the lowest, it burns with a blue flame and very intense. Ethane, which is the next heat carbon higher than that, burns with a slightly smokey flame and the next a more smokey flame and so on up above that, it burns with a more smokey flame and hence requires more oxygen to cause it to burn with a blue flame.

By Judge Ames:

Q. Do you know what the standard meter for consumers in a city like Oklahoma City—do you know what pressure it is constructed to operate at?

A. The standard pressure is 4 oz. pressure meter constructed to deliver gas per thousand cubic feet on the basis of 4 oz. pressure. That means additional pressure above atmospheric pressure.

Q. That is the standard meter, is it?

A. That is my understanding of it.

Q. Now suppose the gas is being delivered at a pressure even of greater or less than 4 oz, what is the result in heat units?

A. The greater the pressure on the gas the greater the number of heat units in the gas delivered per cubic foot; the less the pressure on the meter the less the number of B. T. U. in the gas delivered per cubic foot. For instance, now you deliver it at say 1 oz. that means you have 14.4 pounds plus the 1 oz. on it and you should deliver at 14.4 pounds plus 4 oz. Say, if you take 14.4 plus 1 oz. which is your numerator and divide by 14.4 plus 4 oz. which is your denominator, that compound fraction of 100% will give you your percentage of pressure or the number of B. T. U. it would deliver at that particular pressure. When you deliver it at 6 oz. pressure you use the same relation. You are delivering more heat units per cubic

et than your meter registers delivered under your ordinary construction of 4 oz. pressure.

Q. Then if the pressure is greater than 4 oz. a greater number of heat units is being delivered to the consumer than he pays for?

A. Yes.

64 Q. What would be the difference in heat units between gas delivered at 4 oz. and 2 oz.?

A. I would have to figure that out. The average pressure that is generally stated, it is generally accepted at about 14.4 pounds. Now you add to that 2 oz. you have $\frac{1}{8}$ of a pound and 14.4 plus $\frac{1}{8}$ would be your numerator and that divided by 14.4 plus 4 oz., which is your denominator, and that fraction of 100% would be the amount. It would be away above 95% would be my opinion, or even above that.

Q. And at a 6 oz. pressure the same formula would apply?

A. For your 6 oz. pressure you add your 6 oz. to 14.4, which would be your numerator, and divide that by 14.4 plus 4 oz., which would be your denominator, and in that your numerator is larger than your denominator and you would be delivering more than the standard meter requires at its 4 oz. pressure.

Q. The 14.4 is found at atmospheric pressure?

A. Yes, and the amount put on your meter pressure.

Q. The variation would be approximately 1%?

A. Well, in the one case I suppose a little more and the other a little less. My impression would be, at 6 oz. you would have right at 100 to 9 10 and at 2 oz. you would have a loss somewhere of $\frac{1}{2}$ to $1\frac{1}{2}$ of the B. T. U. of what it ought to deliver at the 4 oz. pressure on the gas meter.

(Witness excused.)

65 Mr. R. H. LOCKE, being called as a witness on behalf of defendants, after being first duly sworn, testifies as follows:

By Judge Ames:

Q. You may state your name.

A. R. H. Locke.

Q. You live in Oklahoma City?

A. Yes sir.

Q. What is your business?

A. Chemical engineer.

Q. How long have you been a chemical engineer?

A. Since I left the University of Missouri in 1904.

Q. Have you had occasion to study the natural gas industry particularly with reference to the compression and absorption plants on pipe lines?

A. Yes sir.

Q. Are you connected with any business concerns that burn natural gas?

happen to rot a joint and cause the blowout just at that time
57 it would cause a loss of thousands of dollars in order to get
that all thawed out, so to speak; and that is one very great
advantage to an industrial operator that would come from having
the gasoline removed and therefore the liability of having such an oc-
currence as this taking place; and another advantage is that it de-
livers a dry gas, that is, a gas free from moisture and also a uniform
product. I mean by that, a gas that more nearly approaches the
point of pure Methane. If pure Methane was delivered to us at all
times our burners would require no adjustment, that is, no continual
adjustment and we could control the flow of heat to our boilers and
possibly in a much more uniform manner and get more heat units
out of the gas, than if we were continually adjusting the burners
and the same way with a consumer, he would get more heat units
out of the gas if it was delivered to him in a uniform manner.

Q. Does he know anything about adjusting burners?

A. You are speaking of industries or wholesale consumers?

Q. Yes, I mean the domestic consumer?

A. Practically nothing at all. The heat units that are delivered
to the ordinary housewife in the form of gasoline are practically lost
for the simple reason that, while our stoves are all made in such a
way that the burners can be adjusted, if it is not fixed in such a way
that the damper can be turned by the maids or help working about
the stoves they are occasionally not closed and they get a yellow
flame and that shows we are not getting all the best heat units out
of the gas. If we should have delivered to our cooking stoves a
uniform product, such as pure Methane, we would have no adjust-
ment to take care of at all, but on the other hand, if we have a gas
delivered that would be high in gasoline content one day and possi-
bly a reduction of temperature in the pipe which would cause the
gasoline to be taken out and we would get a pure Methane delivered
another day or two, and up and down, the heat units would be such
that the housewife would not get any material benefit out of the
increased heat value of the gas containing gasoline. In other
58 words, these excess heat units are practically lost to the house-
wife consumer, due to the fact that the stoves are not ad-
justed to take care of this excess units. This is evidenced by the
burning of a yellow flame.

Q. Does the absorption plant take from the natural gas any of
the Methane?

A. No sir, it does not.

Q. I believe you say that pure Methane is the ideal fuel in the
natural gas?

A. Yes sir.

Q. The higher heat carbons then that are extracted by the ab-
sorption process leave a natural gas which for domestic purposes is
better than it would be with those high heat carbons for the ordinary
consumer?

A. Yes sir.

Q. Now looking at the business from the standpoint of its economy

A. Yes sir.

Q. Have you made a study of it from the standpoint of consumption of natural gas?

A. Yes sir, I have.

Q. You are familiar with the so-called absorption process that is used on pipe lines, are you?

A. Yes sir.

Q. I will ask you whether, in your opinion, this absorption process from a physical standpoint, is an advantage or disadvantage to the pipe line?

A. It is a distinct advantage to the pipe line.

Q. In what particular?

A. Well, the principal advantage is that it takes the gasoline out of the moisture from the gas. The gasoline being a very good dissolving agent for the rubber which is used in the patent joints on those pipe lines it prevents the eating out of this rubber and therefore reduces the liability of the blowouts occurring at joints. The moisture has a tendency to cause corrosion of the pipe line and especially if any of the gas wells should happen to blow a little salt water. The salt water gets into the pipe line which causes the corrosion of the metal.

Q. The removal then of this liquid content facilitates the transportation of the dry gas, does it?

A. Yes sir.

Q. What is the effect of cold on the transportation of gas if the liquid content is not removed?

A. The gas being under certain pressure in the pipe line at times, if the temperature is reduced the gasoline content will condense on the sides of the pipe and will, of course, flow down into the low places of the pipe and there set up an absorbing action of other gas that comes along. In other words, it not only—the reduction of the temperature—not only causes a condensation of a portion of the gasoline contained but this condensed portion also sets up an absorbing action on other portions of the gasoline contained which increases the amount of gasoline produced in a pipe line. This gasoline, of course, dwells in the low places, in the joints and along the sides of the pipe which makes an obstruction to the passage or flow of the gas, and unless it is removed from the low places it will soon form sufficient obstruction to prevent gas from being transported to the point of delivery.

Q. Looking at the subject from the standpoint of the consumer, would it be an advantage or disadvantage to the consumer?

A. It is a very distinct advantage. The advantage, first, is that the gasoline condensing in the pipe line causes the rubbers in the joints to rot and therefore increases the possibility of blowouts, which increases the possibility of their supply being cut off at any time. Take my own particular industries operating a chemical plant at Sand Springs, Oklahoma, it would be very disastrous to me if at any time we should have one of these blowouts in the pipe line just at the time when we were fusing a pot of caustic; if the gasoline should

value, would you say that the absorption plants are an advantage or disadvantage commercially?

A. They are a distinct advantage for the reason that, as I have just stated, the greater per cent of the heat units contained in the gasoline delivered for domestic consumption are lost. The taking out of these portions of the gas and delivering it for domestic consumption is a very distinct element of conservation and I should say that it at least should be a compulsory act by the government to remove this gasoline content from the gas for the purpose of using it in very high class engines such as aeroplanes and motors for war purposes.

By Mr. Walker:

Q. How much does the extraction of the gasoline reduce the heat units of the gas delivered to the consumer?

A. I should say that the ordinary absorption plant, taking not more than three-fourths of a pint to a pint and a quarter, would not reduce the heat value to exceed 2 or 2½ per cent.

Q. Do you believe it would be an advantage to use some other method that would get a greater quantity of gasoline out of 169 this gas than an absorption plant, if that could be done?

A. Yes, the more nearly you approach the pure Methane content the more nearly you get an ideal fuel.

Q. How much would the heat units be reduced if you could get a process which would take out all of the gasoline and leave a practically pure Methane?

A. That depends on the degree of gasoline contained in the original gas. If you take gasoline that will yield four gallons to the thousand cubic feet, which is a very high grade gas, it would reduce the content of the gas at the well, the B. T. U. at the well considerably, possibly 15 or 20%, but the gas delivered under these conditions would still have a B. T. U. of around 1,000 or 1,100 and that is a very satisfactory gasoline for all purposes.

Q. Gas for all purposes?

A. Yes, gas for all purposes.

Q. And a much more satisfactory gas for domestic purposes?

A. Oh far more. If you should permit gasoline that wet to go into our domestic—for domestic consumption, you would have an awful roar because there would not be a housewife in the town that could keep her aluminum kettles looking anything like decent. I remember when the Cushing gas was turned into the mains the Dinks Parish Laundry thought the gas wasn't any good because it smoked, and as a matter of fact he was losing all of the gasoline that was being delivered to him in the form of carbon monoxide in the form of unburned fuel, and I will venture to say, if you will look at 60%—I will say 75% of the smoke stacks of industrial plants in this town you will see them smoking. In other words, they are not properly adjusted from the burners and the gas they are getting at this time—and if the gas should be delivered to them in a wet condition, why their smoke would be very greatly increased. I have

seen the smoke stack of the Lee Huckins Hotel smoke so much I thought they were burning coal and as a matter of fact they were burning gas.

170 By Judge Ames:

Q. What is the difference approximately, between the heat value of gas delivered through a meter which is set to deliver 4 oz. and the delivery of gas through that same meter say of a 2 oz. pressure?

A. The per cent of gas delivered at 2 oz. if the meter is adjusted to 4 oz. is only about $1\frac{1}{2}\%$ less, that is to say, if our standard meters are working at 4 oz. pressure and 2 oz. pressure is maintained the amount of gas will be about $1\frac{1}{2}\%$ less than if delivered at 4 oz. pressure, and therefore the B. T. U. would be decreased in proportion.

Q. The formula which was stated by Dr. De Barr is the correct formula as you understand?

A. Yes sir. Those factors are all worked out and applied to industrial consumers at all times. We have quite a bit of that to contend with in the plant at Tulsa. They have a long line of scales worked out for all pressures, our pressure there is 8 oz. and for every pound there is a different factor applied. This is known as the application of Boyle's law. Dr. De Barr has fully stated the matter.

Commissioner Humphrey:

Q. That is Wescott's Hand Book you have there?

A. Yes, sir.

Commissioner Humphrey: We have that here in the office, haven't we, Mr. Mitchell?

Mr. Mitchell: Yes sir.

(Witness excused.)

171 CHARLES K. FRANCES, being called as a witness on behalf of defendants, after being first duly sworn, testifies as follows:

By Judge Ames:

Q. State your name.

A. Charles K. Frances.

Q. What is your business?

A. Chief chemist for Cosden & Company at Tulsa.

Q. How long have you been with Cosden & Company?

A. Since last June.

Q. What was your business prior to that time?

A. Professor of Petroleum Technology at the A. & M. College, at Stillwater, Oklahoma.

Q. How long have you been a chemist?

A. About twenty years.

Q. Are you familiar with the natural gas industry from a chemical standpoint?

A. I am.

Q. You are familiar with the absorption plants that are used on natural gas pipe lines, are you?

A. Yes sir.

Q. Looking at the subject from the standpoint of pipe lines physical property, state whether, in your opinion, these absorption plants are an advantage or disadvantage to the property.

A. Why, the removal of the gasoline and moisture from the gas is really a necessity, that is, if it is not removed the pipe will be corroded on account of moisture and the gaskets will decompose through the action of the gasoline, and the gasoline will condense and flow to the low places on the line interrupting the services owing to the prevention of the passage of the gas, and whether the gasoline has any value or not it is really a necessity that it should be removed.

Q. It should be removed whether it is saved or not?

A. Yes sir.

172 Q. From the standpoint of the ordinary consumer in cities, would you say that the removal of this liquid content of the gas is an advantage or disadvantage to the consumer?

A. It is an advantage to the consumer. It makes it a uniform product delivered at the uniform rate and a much more satisfactory fuel.

Q. In the case of the ordinary domestic consumer, if the gasoline content was not extracted from the gas, would he get the benefit of the additional heat units in that higher hydrate carbon content?

A. The average consumer would not, because they have no knowledge of how the burners should be adjusted and it would burn with a smoky flame and when the gas flame is burning with a smoky flame it indicates part of it is not being consumed by the flame and will be deposited upon cooking utensils, and in the case of aluminum which is being used, it would be an injury to the vessel as well as not getting the heat units. And again, there would be, if the gasoline would get through the line, as the pipes go throughout the house there would be low places there and the gasoline and moisture would condense causing a flickering of the flame and in many cases it would go out, and where a maid thought she was cooking dinner she would find out the flame was gone out, and in some cases it would be very dangerous.

Q. What is the natural gas content that is desirable to retain for ordinary domestic purposes?

A. Methane.

Q. Do the absorption plants take any of the Methane out of the gas?

A. No sir.

Q. They merely get the highest hydro carbons?

A. Yes sir.

Q. And the extraction of those is an advantage to the gas as a commercial product?

A. A distinct advantage.

173 Q. Do you know whether there is a demand for this high grade gasoline that is extracted from natural gas?

A. The position which I now occupy puts me in a place that I know what the government wants, and there is a great demand for the high grade gasoline, and the absorption gasoline is higher grade than is usually put out by the large refinery.

Q. That demand is by the government?

A. Yes sir.

Q. What is that used for?

A. Principally for aeroplane motors.

Q. In the testimony at the former hearing in this case, a witness stated that during the blizzard in December when the gas shortage existed he left all the burners in his house going and had a flame approximately a half inch high; that he did that several times, and later, when the Morrison gas came in and the supply increased, he had a flame something like 5 inches high, but his flame varied at various times but that each time he watched his meter, the two foot gauge on his meter, and at all these times the same amount of gas was being shown by the meter. What would you say as to that being possible, and if it is possible, what explanation is there for it?

A. I think the gentleman was mistaken. It would not be possible for a flame to vary to any great extent, that is, in height. The meter is adjusted to deliver the gas under a 4 oz. pressure. All the stoves are arranged to burn the gas at their pressure. Now if the pressure is low, the flame will not be high, owing to the fact that the meter is moving slowly. Meters that are used almost exclusively in the gas industries are dry meters arranged on the two bellows—as one bellows fills the other empties and so as the cubic foot of gas has to be delivered before the meter will register it must necessarily, in delivering that one cubic foot, move slow when the pressure is low as compared when the pressure is high the meter will move faster. So if the gentleman's watch was correct, why I have no explanation to make, but it is absolutely impossible for that condition to exist if the apparatus is all in proper working order.

174 Q. Now the variation between the gas delivered at 1 oz. pressure say, and at 6 oz. pressure would not exceed upward of 3% would it?

A. No sir, I do not think it would be that much.

Q. And the variation in the flame could not be more than two or three per cent?

A. A very small per cent.

175 R. H. LOCKE being recalled, testifies as follows:

By Judge Ames:

Q. Did you hear the question I have just put to Dr. Frances?

A. Yes sir.

Q. Would in your opinion, such a situation like that, be physically impossible, and if so, what your explanation of it is.

A. I think it would be physically impossible; however, if such a condition as that existed and if the man who gave the testimony was honest in his convictions, I think his observations were insufficient or incorrect. As Dr. Frances explained, these meters are made on the filling of two bellows and at a low pressure it will fill slowly and discharge slowly, therefore the two foot indicator will move slowly, and if the flame is a half inch high during that operation and then he comes along with the flame 6 inches high the indicator is bound to move at a faster rate to deliver enough gas to produce that 6 inch blaze. There can be no other explanation of the proposition at all—as the bellows fill faster more gas is being delivered.

Q. You would say then either he was incorrect or that the meter was out of order?

A. Yes sir, providing the apparatus was in working order.

(Witness excused.)

Dr. EDWIN DE BARR being recalled, testifies as follows:

By Judge Ames:

Q. Doctor, did you hear the question as I stated to Dr. Frances?

A. Yes sir.

Q. State with reference to that, do you think that situation would be possible, and if so, how would it be possible.

A. In my judgment, the man is mistaken in his observation. It would not be possible to have the flame very low with the meter moving. As meters are constructed such flames could not exist with the time conditions as specified. I think the observer was mistaken. That is my judgment in it, because the meter was either out of order or observations were incorrect.

(Witness excused.)

176 W. R. MOLINARD being called as a witness on behalf of defendants, after being duly sworn, testifies as follows:

By Judge Ames:

Q. State your name.

A. W. R. Molinard.

Q. In your testimony at the previous hearing in this case you refer to your Gas Customers' Hand Book at page 5, but as I recall, that was not offered in evidence. I wish now to have that marked as an exhibit and offered in evidence. (Which is accordingly done.) I will ask you to state whether or not this Gas Customers' Hand Book has been distributed in Oklahoma City?

A. Yes sir, it has been very generally. Our records show that out of 20,000 delivered to us in the summer of 1916 over 15,000 of them have been distributed. The principal method followed was to have our meter readers supplied daily with as many copies as they could conveniently carry and they were distributed to each individual house as they went to the house for the purpose of reading the meter.

and in, I would said, 95% of the cases the book was delivered into the hands of some one presumably at the head of the house or closely associated with the family.

Q. In addition to that do you keep a supply in the office on the counter available to customers?

A. Yes, we have a long counter beside the cashier's window where writing material is provided, also blank check forms, calendar, etc., and on that long counter we keep at least two and usually three stacks of these books and as well as I can judge they disappear at the rate of about 75 a week, evidently being picked up by interested customers and the public generally who see them on this counter which is in the front part of our office and past which practically everyone that comes into the office has access—to these books.

Q. With reference to your meters, at what pressure are they adjusted to measure the gas?

A. Normal 4 oz. pressure.

Q. That is the standard meter, is it?

A. Yes sir.

177 Q. Do you have anything to do with the manufacture of those meters?

A. No, they are made—I believe 95% of the meters which we use in domestic service are made by the firm of Helm & McElhiney of Philadelphia.

Q. In there a meter on the market which is constructed so as to vary its (I don't know how to put my question)—so as to vary its measurement so when the pressure varies—in other words, is there a meter that adjusts itself to the pressure between 1 oz. and 6 oz. pressure?

A. No, there is no meter of that kind commercially made, if there is any it would be made for lab-ratory purposes but I do not know of any.

Q. The standard meter is the one you use here?

A. Yes sir.

Q. Is that the same meter that is in use at other places in the State?

A. Yes, and practically all over the United States.

Q. When the line pressure then varies from 4 oz., either up or down, there is inaccuracy in that measurement increase with the variation is there?

A. Yes.

Q. And that inaccuracy varies in proportion to the amount of variation in the pressure?

A. Yes sir.

Q. And a difference of 3 oz. in the pressure one way or the other, would produce approximately what per cent of variation?

A. The variation from 4 oz. to 1 oz. shows a percentage or 1¼ per cent and 3 oz. the other way would be approximately the same percentage above standard.

Q. Taking the business the year around, is the pressure greater or less than 4 oz.

A. I can safely say that for 350 days out of the 365 the pressure is greater than 4 oz.

Q. Is it physically possible to maintain that pressure at 178 exactly 4 oz. all the time?

A. No, it is not.

By Mr. Reiss:

Q. You have given some thought to the subject of storage capacity of natural gas?

A. Yes.

Q. How many holders and of what capacity, in your opinion, would be required to meet the shortage that occurred here early in December last year?

A. That shortage, as my memory serves me, was December 8th, 9th, 10th, 11th, 12th and 13th, and I think 14th; in other words 7 days. We estimate that in order to properly supply this city with sufficient gas for domestic purposes to adequately heat the dwellings and residences together with the needs for cooking in those dwellings that 20 million feet is consumed on a cold day, that is, a day approaching zero weather.

Q. I mean a storage capacity such as to take care of what you had there in addition to what would be coming through the pipes?

A. I think we should figure on 15 million storage a day to adequately tide over.

Q. In other words, to take care of that shortage, you would have had to have seven 15 million foot holders?

A. Yes sir.

Q. Have you an idea what the approximate cost of such holders would be?

A. Well, about one and a half million dollars each.

Q. Assuming that holder capacity would be safe, how many days in the year would you have occasion to use it?

A. Well, this experience we have just gone through in December, 1917, is the longest period we have experienced in the history of the supply of natural gas by the Oklahoma Gas & Electric Co.

Q. As a matter of fact, some years you would not have occasion to use them at all?

A. No, we have gone entirely through winters without any need.

Q. What was the total receipts from the sale of gas for the year 1917?

179 A. \$918,403.55.

Q. That included the share of the Oklahoma Gas & Electric Co. and the Oklahoma Natural?

A. Yes.

Q. What did the Oklahoma Gas & Electric Company receive?

A. \$643,361.68.

Q. Is that the Oklahoma Gas & Electric or the Oklahoma Natural?

A. Oklahoma Natural.

Q. And the Oklahoma Gas & Electric Co. received how much?

A. The difference between those figures—\$275,041.87.

(Witness excused.)

Commissioner Humphrey: Let the records show that Mr. Ruth and Mr. Henry Gray appeared for the Complainants.
The case will be continued to January 17, 1918.

At said hearing the following exhibit was filed:

EXHIBIT.

Gas Customers' Hand Book.

Telephone PBX-14.

Oklahoma Gas & Electric Co., Oklahoma City.

Gas Customers' Hand Book With Rates for Natural Gas Service for Oklahoma City and Britton, Okla., as Filed with the Corporation Commission of Oklahoma.

Published by Oklahoma Gas & Electric Company, H. M. Byllesby & Company, Engineers and Managers.
Copyright 1916.

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Natural Gas Service.

The Oklahoma Gas & Electric Company owns and operates the gas distributing system in Oklahoma City and Britton. It distributes natural gas to customers as the agent of the Oklahoma Natural Gas Company.

The Oklahoma Gas & Electric Company does not own any interest

whatever in the supply of natural gas, nor in the pipe lines conveying the gas to this city.

Natural Gas is supplied to customers under contracts between the customer and the Oklahoma Natural Gas Company, the Oklahoma Gas & Electric Company signing the contracts as agents for the former company.

There is no common ownership of these two corporations.

Personal Attention to Every Customer.

We wish our service to be so utilized in gas burning appliances that you obtain full measure of value without waste.

The advice and suggestions of our customers are valued. Regardless of the purpose for which you call you are always welcome at our office. You have as much right to come to criticize as you have to pay your bill. We prefer that you come direct to us concerning all matters of mutual interest and concern. This is businesslike and in the spirit of partnership which we seek to cultivate.

The officers and employees are at your service. They are working for you. The officers endeavor to receive personally all who wish to see them. To meet the requirements of the public in the quickest and most efficient manner proper departments are maintained.

Personal Attention to Every Customer.

Nature's Cleanest and Best Fuel.

Oklahoma City's supply of natural gas is excelled by few other cities. This fuel has nearly twice the heating efficiency of manufactured gas.

Grime and smoke hurt cities. Oklahoma City, like other progressive communities, knows the commercial value of keeping itself clean and sightly.

Smoke, soot, coal dust and ashes are costly. They take money out of your pocket by destroying fabrics, furniture, decorations, growing plants and innumerable articles of common use. They make beautiful buildings unsightly.

Smoke and soot from a chimney do not stay home. These nuisances are distributed to the displeasure and expense of the neighborhood.

The expense of keeping clean in a smoky city runs into big totals.

Organizations all over the world are fighting for less smoke and more sunshine—for cleanliness and healthfulness.

Natural gas makes no smoke. It distributes no dirt, leaves no ashes. It does all important work with a minimum of human effort.

Reducing the smoke nuisance means a monetary saving to citizens—helps to improve and brighten the city—tends to increase the value of property.

Besides your own convenience, comfort and economy, you con-

tribute to the general welfare if you burn gas for house warming, cooking, heating water, etc.

Personal Attention to Every Customer.

We Concentrate on Service.

The Oklahoma Gas & Electric Company earns its wages. It wants no revenue which does not rightfully belong to it for service performed.

We concentrate on service. We leave the merchandizing of appliances, and gas piping and installations on private premises to the merchants and mechanics of this city who make their living from these occupations.

We maintain a department with natural gas experts devoting their energy to studying the requirements of customers, large and small, and for the purpose of satisfying every gas demand in the most economical way.

These experts are at your disposal all the time. They will render advice and assistance; plan installations and tell you of the firms which will give you proper attention.

Personal Attention to Every Customer.

Emergency Heating.

Natural gas is one of Oklahoma City's greatest assets—one of the biggest contributors to the comfort and convenience of its citizens and a source of cheap fuel for industrial purposes.

Periods of extreme cold weather sometimes cause a brief demand for gas which no practicable and financially possible transmission system can fully supply.

Because of this fact, and the further fact that any long distance pipe line is liable to damage from floods and other unavoidable causes, we advise our customers to maintain some kind of auxiliary heating apparatus for use in possible emergencies.

Personal Attention to Every Customer.

Notice to Property Owners and Gas Fitters Regarding Location of Service Taps.

When about to lay service pipes for the supply of gas to any property, it is necessary to obtain from the Oklahoma Gas and Electric Company the location of the service tap for the particular property. Where mains are laid in paved streets, service taps were provided for each lot before the pavement was put in place.

Your co-operation in this matter will aid us in giving prompt service as well as preventing possible additional work and expense to you.

Personal Attention to Every Customer.

How to Obtain Service.

Office, 112 N. Broadway.

Telephone, P. B. X. 14—All Departments.

A constant effort is made to eliminate "red tape" and to meet the needs of the public quickly and satisfactorily.

Application for service should be made by a personal visit to the company's office at 112 North Broadway.

When the premises are piped and gas has been used before, every effort is made to render service within twenty-four hours.

Newly piped houses must be inspected and approved as to piping and fixtures by the City Building Inspector, whose office is at the City Hall, before the company is permitted legally to install a meter or make connection. The company also maintains an Inspection Department for the purpose of promoting prompt and efficient service. If doubt exists as to whether the official city inspection and certification has been made, a telephone message to the Contract Department will bring immediately the information desired.

All licensed plumbers and gas fitters in Oklahoma City are familiar with the necessary requirements to provide for the installation of house connections and meters, for the necessary location of the piping, and the issuance of certificates of inspection.

Personal Attention to Every Customer.

Advance Deposits.

Gas is one of the few products for which payment cannot be made at the time it is secured by the customer.

This should be remembered when deposits are requested, and customers are assured that such request is not a reflection upon their integrity.

A cash deposit may be required of one and one-half times the amount of maximum monthly bill or the estimated monthly bill, the minimum required being \$2.00.

Special guarantee or advanced payments may be required where expenditures over and above those for ordinary main and service connections are necessary, or where exceptional or special methods of construction are demanded.

Customers will be furnished with a certificate of deposit, which deposit will bear interest from date at the rate of five (5%) per cent per annum, payable on July 1st of each year, or when service is discontinued.

The deposit will be repaid to the customer, upon surrender of the certificate, when service is discontinued in case all obligations of the customer to the company have been discharged.

Personal Attention to Every Customer.

Meters.

Every customer of the company is provided, without cost, with an accurate meter to measure the quantity of gas used. Where the merchant maintains one or more scales upon his premises to measure the merchandise you purchase, electric and gas companies equip each customer with a measuring device upon the customer's premises to determine the quantity of service actually taken.

Although gas meters are more reliable than the average clock, like all other mechanical apparatus they are occasionally subject to variations due to unusual conditions.

When a customer has reasonable ground to believe that his meter registers incorrectly, the company will test the meter, without charge, upon written request.

If in error to an extent greater than two per cent, the company will correct bills for the thirty days prior to the test in accordance with the result of the test.

The company will appreciate the customer's co-operation in calling its attention to any apparent error, so that the question may be investigated and measures taken to prevent a recurrence.

Personal Attention to Every Customer.

Service Trouble and Adjustments.

Never look for gas leaks with a match, candle, oil lamp, or any open flame. Open the doors and windows and notify the company, Phone P. B. X. 14.

The company serves a large number of people and requires a large force of employees. Occasionally temporary defects in service occur, and the most efficient employees sometimes make mistakes, but this is the case in all human affairs, large and small.

Every just criticism lodged with the company is regarded as a favor, because we desire our service to be as nearly perfect as ingenuity and unremitting attention can make it. No revenue is desired by this company that it does not earn.

In notifying us of unsatisfactory service, customers should ask for the Adjustment Department (P. B. X. 14.) This department will respond at once to all calls of this nature.

For handling service trouble, we maintain a special force of experts equipped with motorcycles. They are on duty day and night, responding instantly to notifications of service interruptions, fires and damage from storms or other causes. These men will make adjustments, or will advise what should be done when the matter is one requiring the service of a plumber or gas fitter.

Personal Attention to Every Customer.

Each service trouble call is followed up by a return post card asking the customer to indicate whether his trouble has been satisfac-

torily adjusted and if not, in what particular. A prompt reply assists us in maintaining efficient service.

Requests for adjustments in billing should be made to the Adjustment Department within five days of the date bill is rendered in order that the discount for prompt payment may be secured.

Bills are due and payable at the office of the company within ten days from the date rendered.

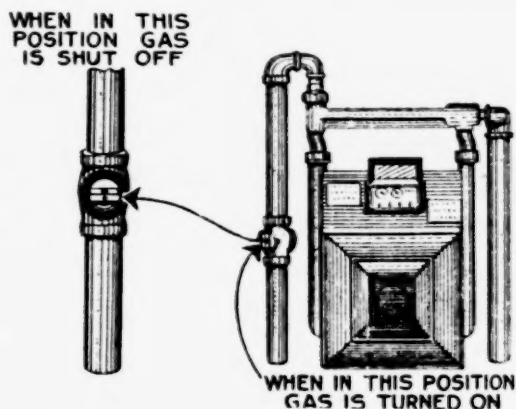
Personal Attention to Every Customer.

How to Shut Off Gas supply from Premises in Emergencies.

The stop cock, illustrated below, and which will be found near the meter, shuts off all gas from premises when the ridge on the stop cock plug is turned crosswise of the pipe.

Caution.

Be sure that all openings are closed before turning on gas.



Personal Attention to Every Customer.

Badges Worn by Employees.

Employees authorized to enter the premises of our customers are provided with these badges:



Personal Attention to Every Customer.

Pulmotor Service.

Call Telephone P. B. X. 14 and ask for "Pulmotor."

Be Careful to Give Correct Name and Address.

Because it realizes that loss of life from accident in many cases may be prevented, the company believes it should utilize all the proved means of resuscitation, both in behalf of its employees and the public. Every employe is instructed in first aid methods found efficient in cases of suspended respiration.

The company maintains at the service of the public a completely equipped Pulmotor, which is simply an ingenious machine for pumping oxygen in and out of the lungs of persons overcome by shock, as asphyxiation, anaesthetics, drowning or certain forms of poison causing suspended respiration. Employees are trained in its application and will respond at once by automobile to all calls, entirely regardless of the cause of injury to the patient.

There is no charge for this service.

Personal Attention to Every Customer.

Suggestions Concerning the Use of Natural Gas.

The company has no control over or responsibility for the piping or appliances on the premises of the customer. Gas is delivered to the customer at the property line.

Natural gas is not dangerous when properly used.

In case of escaping gas, immediately extinguish all fires and lights (except electric lights), open the windows and doors and notify the

company. In no event attempt to locate a leak with a lighted match or open fire.

At each meter there is a stop cock by which the gas may be turned off. (See illustration on page 12.)

No gas-burning appliance should be connected with rubber or flexible tubing. It is forbidden by City Ordinance No. 1695, as follows: "It shall be unlawful for any person, or persons, to convey gas from one part of a building to another through a rubber hose."

Every gas-burning stove or heating appliance should have a vent or flue connection for carrying off the products of combustion, namely: carbon dioxide, nitrogen, steam, etc. The above mentioned City Ordinance reads: "All gas ranges, heaters, water heaters and furnaces must be vented into a brick flue, and in such manner as to permit a free outlet for all fumes or escaping gas."

Personal Attention to Every Customer.

For cooking purposes the natural gas flame should be blue, and noiseless. If it is not, either the air mixers require adjustment, or the gas appliance is at fault. This is also true of room heaters in general. There are, however, certain heaters that work efficiently when burning a yellow flame. We caution our customers against the use of any heater or gas burning device without a flue, for a room full of burned gas is as dangerous to enter as is one full of unburned gas.

No gas will give satisfactory service in dirty or neglected appliances, or through house pipes too small to pass a sufficient quantity of gas.

Always be sure that oven burners are turned off when not lighted in order to avoid the accumulation of gas in the oven and the resulting possibility of explosion. The vent or flue pipe from the ovens should never be covered or allowed to be stopped up; otherwise similar conditions may result.

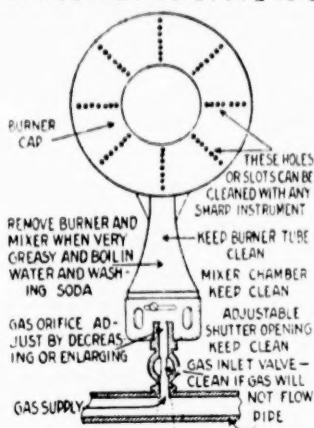
On the next page you will find a drawing of the ordinary top burner of a gas range or cook stove showing the parts plainly indicated. Burners in modern gas ranges can be easily removed for cleaning. After cleaning the holes or slots in the burner ring, boiling in a solution of water and washing soda will thoroughly clean the apparatus.

Personal Attention to Every Customer.

If the gas blows out, flashes back or burns in the mixer, too much air is being admitted to the mixing chamber. In such cases adjust the shutter.

Too much gas in proportion to the air causes a white or yellow flame sometimes producing soot or carbon. This can be remedied by reducing the size of the gas orifice in the mixing chamber.

**BEFORE CLEANING VALVES MAKE SURE
GAS SUPPLY TO STOVE IS SHUT OFF.**



Every gas user should make sure — both for reasons of safety and economy — that his house-piping, appliances and connections are in serviceable condition and not leaking.

**IN ALL CASES OF EMERGENCY NOTIFY
THE GAS COMPANY.**

Personal Attention to Every Customer.

For repairs, replacements, adjustments, etc., secure the services of a plumber or gas fitter.

Simply made gas igniters may be attached to gas burning appliances and the use of matches avoided.

Carelessness in the use of gas is the biggest factor producing high bills.

Personal Attention to Every Customer.

Disconnections and Moving.

Under ordinary conditions five days' notice should be given of change of address, when it is desired to continue service. It is best to make this notice in writing, being careful to state the essential facts.

During the moving period of spring and fall, ten days' notice of change of address is requested, whenever possible.

When customers desire to discontinue service permanently, five days' notice should be given in writing.

Personal Attention to Every Customer.

Basis of Rates.

Unlike other business demands, your demands upon us are of an emergency nature, regulated entirely by the turning of a valve when desired. Delivery of the product on your demand must be instantaneous. Therefore, we are obliged to provide sufficient capacity in equipment to equal or exceed all demands simultaneously imposed on our system by customers.

As the storing of natural gas in large quantities is not commercially practicable, it is necessary to supply sufficient gas to meet all demands upon the instant they are made. The capacity of our plant can never be less than the total of such demands.

In providing this capacity certain fixed expenses are entailed, such as interest, depreciation, taxes, insurance, etc. These are a daily drain upon the resources of the company whether any gas is sold or not.

For this reason a minimum bill of one dollar per month per meter is made.

The rate schedules of the company are the result of long experience and careful study of the many conditions under which service is supplied. They represent an earnest attempt at equity and fairness.

Under these rates all customers start at the same base rate and pay identical prices per thousand cubic feet for similar quantities of gas used under like conditions.

Personal Attention to Every Customer.

Rates for Gas Service.

First 200,000 cubic feet used per month, 30 cents per 1000 cu. ft.

Discount, five cents per 1000 cubic feet if paid within ten days from date of bill.

Next 300,000 cubic feet used per month, 21 cents per 1000 cu. ft.

Discount, five cents per 1000 cubic feet if paid within ten days from date of bill.

Next 1,000,000 cubic feet used per month, 13½ cents per 1000 cu. ft.

Discount, two and one-half cents per 1000 cubic feet if paid within ten days from date of bill.

For all in excess of 1,500,000 cubic feet, used per month, 12½ cents per 1000 cu. ft.

Discount, two and one-half cents per 1000 cubic feet if paid within ten days from date of bill.

For convenience in determining costs of large installations where the consumption is more than 1,500,000 cubic feet per month, the net cost of gas may be determined by figuring gas at 10c. per 1000 cubic feet, plus \$58.00. \$58.00 represents the total cost in excess of 10c. per 1000 cubic feet of the first three steps in the rate.

Each meter is subject to a minimum bill of one dollar per month. (See page 20.)

Personal Attention to Every Customer.

182 In response to a request from the Commission the following letter from the Public Utilities Commission of Ohio was written to this Commission, and by it considered in evidence.

183 The Public Utilities Commission of Ohio,

Commissioners:

Charles Marshall, Chairman,

Beecher W. Waltermire,

Byron M. Clendening.

C. A. Radcliffe, Attorney.

Columbus, Ohio, February 4th, 1918.

Hon. W. D. Humphrey,

Corporation Commission of Oklahoma,

Oklahoma City, Oklahoma.

DEAR SIR:

We are in receipt of your favor of January 29th and we herewith quote from your communication and make replies in the order mentioned:

"1. The Commission desires to obtain the following information concerning registering of standard meters under pressure running from one to six ounces and the relative ratio of the heating unit thereof."

We presume that you have reference to meters used for domestic purposes and if so, we wish to advise that so far as the registration is concerned, the meter will register the same amount of gas regardless of delivery pressure. In other words domestic meters measure volume irrespective of pressure. The relation of pressure to heating value is illustrated as follows: One thousand feet of gas at atmospheric pressure will give a certain amount of heat. The heat of one thousand feet of gas under one ounce pressure will give the equivalent to 1,004.2 feet; under two ounce pressure 1,008.5 feet; under 3 ounce pressure 1,012.7 feet; under four ounce pressure 1,017 feet; under 5 ounce pressure 1,021.2 feet; and under 6 ounce pressure 1,025.5 feet.

184 "2. Your opinion as to booster and compressor stations on pipe lines and depth of which gas pipe lines would be buried under ground."

Booster and compressor stations are very necessary for transmitting gas at long distances and are especially essential when well pressures have fallen so low that they will not deliver gas into transmission lines carrying higher pressures than the pressures of the wells. In order to deliver large quantities of gas through long transmission lines, it is necessary to compress the gas up to the pressure capacities of the line. As for example—a line carrying 325 pounds' pressure per square inch will deliver twenty-one times as much gas as the same line carrying gas under fifteen pounds' measure.

There being such a limited amount of moisture in natural gas, it is not necessary to bury them as any considerable depth. The depth at which lines are laid is usually a matter in respect to protecting them — the plow rather than the frost.

"3. Opinion relative to installation of compressor and boosters in reference to 'rock pressure' of wells and the effect of these compressors and boosters upon the heat units; also concerning action of water from wells where boosters and compressors are used."

The introduction of compressors and boosters does not influence in any way the heat units of the gas handled by these devices. A given quantity of gas compressed to one-half its volume will contain the same amount of heat units and vice versa a given quantity of gas expanded to twice its volume contains the same amount of heat units. A compressor, by its function of compressing ten feet of gas into the space occupied by one foot of gas, has the effect of storing in the one foot all of the heat units contained in the ten feet before compression, consequently a consumer in burning this one cubic foot would get the same results as he would have had in burning all the ten feet before compression. The action of compressors on wells in relation to the effect of water results as follows: The pressure of the gas in the well ordinarily prevents water from flowing into the well; as soon as compressors are placed on these wells the gas is taken away from the well so rapidly that the pressure in the wells is reduced below the point where gas prevents water from entering.

"4. Opinion in reference to absorption or extraction plants as to the number of plants in ratio to the amount of gas delivered to the consumer and the percentage of heating units removed per 1,000 cubic feet of gas."

We presume you have reference to gasoline extraction although you do not so state. Average natural gas containing gasoline produces about one pint per thousand cubic feet. There is very little loss of heating units in the removal of gasoline, from the fact that there is a shrinkage in each thousand cubic feet of about forty feet of gas, and the heating units in the remainder would not be affected over one per cent.

"5. What make or type of meters, if any, have you established as a standard? What is your opinion as to gas holders? Have you established a standard heating unit?"

We have established no type of meter as a standard in this state. There are many makes of meters that are reliable and in general use. Our opinion as to gas holders is that where they are already built, as in the case of artificial companies, we recommend their use, but we do not believe that the average natural gas company can afford to build gas holders for natural gas storage. We have no established heat unit for natural gas as the product varies in different localities and is not within the control of the producer.

If the foregoing does not answer your questions or leaves you in doubt, we will be very glad, if you will advise us, to give you additional information.

Yours very truly,

THE PUBLIC UTILITIES COMMISSION
OF OHIO.

(Signed) H. L. GOODBREAD,
Secretary.

V. C. S.

In response to a request from the Commission the following letter from the Bureau of Mines, Washington, D. C., was written to this Commission, and by it considered in evidence:

Department of the Interior.

Bureau of Mines.

Bartlesville, Okla., February 19, 1918.

W. D. Humphrey,
Commissioner Corporation Commission of Oklahoma,
Oklahoma City, Oklahoma.

DEAR SIR:

Referring to your letter of February 5, 1918, addressed to the Bureau of Mines, Washington, which has been handed to me that may furnish additional information:

So-called dry gas in Oklahoma or any field which contains enough of the higher hydrocarbons to make their extraction profitable, is always a gas of exceptional B. T. U. value. Even after the drying of these gases they have B. T. U. values far above that of pure methane, due to the ethane and other higher members which are not condensed by the absorption or compression treatments.

Regarding the actual losses of B. T. U. value, I will quote Mr. Addison's complete tests to determine the losses:

"The reduction in heating value due to the recovery of the gasoline content can be closely estimated. Suppose a given gas has a gasoline content of 100 gallons of gasoline per million feet of gas, or .0001 gallons per cubic foot of gas. The gasoline made by the absorption process will cause a shrinkage in volume of the gas treated, each gallon of gasoline being equal to about 35 feet of vapors. Then .0001 gallons of gasoline extracted from one cubic foot of gas would cause a shrinkage of .0001 x 35, or .0035 cubic feet, leaving, out of each cubic foot treated, .9965 cubic feet available for marketing. Now, gasoline of the nature made by this process has a heating value of about 20,400 B. T. U.'s per pound and is of about 80 Baume gravity, or 5.549 pounds per gallon. The heating value per gallon is then 5.549 x 20,400, or 113,200 B. T. U.'s per gallon. The .0001 gallon extracted from one cubic foot of gas would contain 113,200 x .0001, or 11.3 B. T. U.'s.

"If the gas contained before treatment 1,000 B. T. U.'s per cubic foot, the residue of .9965 cu. ft. would contain 1,000 minus 11.3 or 988.7 B. T. U.'s. If .9965 cu. ft. contain 988.7 B. T. U.'s the heating value per cu. ft. is 988.7 divided by .9965, or 992.17 B. T. U.'s per cu. ft. Thus the extraction of 100 gallons per million of gas line from a gas of 1,000 B. T. U.'s heating value results in a reduction to 992 B. T. U.'s, or .8 of 1%. The effect on a gas of any other heating value of gasoline yield can be similarly calculated.

I submit herewith the results of some calorimeter tests on gases before and after removal of their gasoline content:

	1066	
Inlet gas.....	1070	Average, 1065. 3 B. T. U.
	1060	
	1058	
Outlet Gas.....	1058	Average, 1058 B. T. U.
	1058	
Loss due to gasoline extraction.....		8. 3 B. T. U.
	1068	
Inlet gas.....	1070	Average, 1069. 3 B. T. U.
	1070	
	1042	
Outlet Gas.....	1046	Average, 1043. 3 B. T. U.
	1042	
Loss due to gasoline extraction.....		26 B. T. U.
	1094	
	1092	Average, 1092. 3 B. T. U.
190	1091	
	1067	
	1062	Average, 1063 B. T. U.
	1060	
Loss due to gasoline extraction.....		29. 3 B. T. U.
	1094	
Inlet gas.....	1097	Average, 1097 B. T. U.
	1100	
	1063	
Outlet Gas.....	1064	Average, 1062 B. T. U.
	1059	
Loss due to gasoline extraction.....		35 B. T. U.
	1086	
Inlet Gas.....	1087	Average, 1085.66 B. T. U.
	1084	
	1071	
Outlet gas.....	1066	Average, 1069.33 B. T. U.
	1071	
Loss due to gasoline extraction.....		16.33 B. T. U.

"The above tests are all from the same plant at different periods and the gasoline yield very closely the same at the time of each test. Calorimeter tests are not accurate to a degree closer than 4 B. T. U.'s. This error, which may be a plus or a minus error, makes the determination of the loss in heating value determinable only approximately by the calorimeter, since the error in measurement is so large a fraction of the quantity to be measured. However, the average of a large number of tests would show closely the loss due to extraction.

The average of all the above tests shows a loss of 22.98 191 B. T. U.'s per cu. ft. in heating value. For other data on this subject reference may be had to paper by G. A. Burrell, G. G. Oberfall, and P. M. Biddison before the Natural Gas Association of America, Pittsburgh, 1916; and bulletin of Bureau of Mines, No. 88, page 60, and to articles appearing in the trade papers and journals.

"The reduction in heating value noted above is so small as to have no effect on the value of the gas to the consumer, and of this total reduction a portion takes place during transmission of the gas without an absorption plant due to the natural condensation of gasoline in the transmission lines. This condensation has been a source of endless trouble and expense in the past, due to the effect of the condensate upon rubber used in pipe line couplings, and the elimination of this trouble and expense has been the prime reason for the installation of some of the largest plants.

"The amount of this natural condensation, of course, varies with different installations but is surprisingly large when pains are taken to collect and measure the same. On one installation of which I have knowledge, the natural condensation before the installation of an absorption plant was equal to over one third the yield obtained later by the absorption plant."

The above tests were made on gas very similar in original heating values to those generally found in Oklahoma.

Some drying has always been accomplished at gas pumping stations in cooling the gas before it entered the lines, thus reducing its actual volume and increasing the pipe line capacity, the precipitation of gasoline being incidental.

Much of the condensable hydrocarbons never reach the consumers receiving their gas through long pipe lines, even before drying plants were installed, because it collected in drips along the line and at pressure reducing stations where the expansion of gas in lower pressures caused a refrigeration effect and precipitated these fractions.

192 In Northern Texas a company blew from its drips and wasted 4,600 gallons of condensate per day in winter before the drying plant was put into operation. A California pumping plant, using no drying system, collects 40,000 gallons of gasoline per month from its drips and wastes as much more.

My argument, stated briefly, is this—that even though a drying plant reduces the B. T. U. value two per cent, if the drying plants were not in use the condensate collecting in drips would and always

has reduced the heating value at least half this much—but until the drying plants were installed this feature was considered natural and no thought given to it. As a matter of fact, it is an immaterial point, since the varying and inefficient methods of burning gas far outweighs and hides any variation in its B. T. U. value as small as one or two per cent.

Besides the conservation of motor fuel, drying gas gives a direct benefit, in so much as the gas will be much more uniform because of the removal of the condensate portions before the gas is put into the line on its way to the consumer. When the condensable portions are left in the gas, changes in temperature cause them to condense from and re-evaporate into the gas, causing variations which make burner adjustments necessary when a slug of very wet gas comes to the power plant. Condensable fractions also collect in meters at every drop in atmospheric temperature, necessitating constant attention, testing and draining.

193 All gas meters have proved unsatisfactory at times and cause unlimited litigation and trouble. The orifice meter is much more accurate than the proportional type, and should be used in measuring the large quantities of gas, but can not be used for domestic or small commercial service. We have always considered a meter as more of an umpire than an absolute scientific measurement of the gas, each party being willing to abide by the recorded amounts until they were clearly wrong and beyond tolerance by one side of the other. When carefully watched and tested there is no reason why a meter can not be kept in such condition that neither party shall have a grievance which cannot be compromised.

If the above statements do not cover the points sufficiently do not hesitate to ask for further information which you may desire.

Very truly yours,

(Signed)

W. P. DYKEMA,
Assistant Petroleum Engineer.

194 Thereafter, on the 23d day of February, 1918, the Commission filed in this cause its findings of fact, opinion and orders, which is in words and figures following, to-wit:

195 Before the Corporation Commission of Oklahoma.

Order, No. 1379.

Causes Nos. 3188, 3192, 3197.

Cause No. 3188.

CHAS. H. RUTH et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC CO. and the OKLAHOMA NATURAL GAS
Co., Defendants.

Cause No. 3192.

T. F. DONNELL et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC CO., Defendant.

Cause No. 3197.

CHAS. B. SELBY, Co. Att'y. et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC CO. and the OKLAHOMA NATURAL GAS
Co., Defendants.

Findings of Fact, Opinion and Orders.

By the COMMISSION:

The matter coming on for consideration includes three causes. The issues in each arise out of the alleged failure of the defendants, the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Co. to have provided and furnished an adequate supply of gas for domestic purposes in Oklahoma City at certain times within the month of December, 1917. The three causes were consolidated to avoid duplication of record, and, the conditions complained of having continued into and through the month of January, 1918, the investigation of the charges has been made to include the months of December, 1917, and January, 1918.

The Complaint in Cause No. 3188, Ruth et al. vs. the two corporations heretofore mentioned, purports to be the complaint of the relators individually, and all other residents of Oklahoma City, individually and collectively, who are users of natural gas.

This complaint alleges that the relators are users of natural gas and are dependent upon it for fuel for domestic and business purposes; that the Oklahoma Gas & Electric Company is a

public service corporation, holding a franchise in Oklahoma City for the sale of natural gas, exercising right of eminent domain, enjoying a virtual monopoly in such business, and charged with the duty of supplying such fuel; that the Oklahoma Natural Gas Company is a corporation existing for the purpose of transporting natural gas by pipe lines from the producing fields to Oklahoma City where it is under contract to deliver to the said Oklahoma Gas & Electric Company such fuel for distribution.

The same complaint alleges that inadequate pipe line facilities are provided and that the same are not maintained in good condition, as a result of which the furnishing of natural gas has been interrupted and a reasonably adequate supply of natural gas denied to the relators. It is further alleged that such interruptions have occurred at numerous times within the last three years, certain days in December, 1917, being specified.

The same complaint alleges that the defendant, the Oklahoma Gas & Electric Company, has failed to establish or maintain storage facilities for a reserve supply of natural gas, but that the same are feasible.

The relators pray that the Oklahoma Natural Gas Company be required to show the amount of gas furnished daily since January 1, 1916, to the Oklahoma Gas & Electric Company, to reveal such intercorporate relationship as may exist between the defendant corporations; to produce the contracts entered into between them with reference to supplying gas for Oklahoma City; that the Oklahoma Gas & Electric Company be required to show daily consumption of gas in

Oklahoma City, the volume necessary to supply Oklahoma City during certain months, to show pressure in ounces necessary to provide adequate service in Oklahoma City; and to provide and maintain gas storage facilities.

The complaint of T. F. Donnell, et al. Cause No. 3192, reiterates the allegations in the complaint already reviewed as to inadequacy of service. It alleges that as a result of such inadequacy the relators were without gas for the preparation of meals, that members of the household of T. F. Donnell contracted colds and illness and were compelled to incur expense for medical service; that by reason of lack of heat great numbers of families were required to purchase stoves and fuel, and others, unable to do so because the same could not be secured, were compelled to go to hotels at great expense and inconvenience; and that many business concerns were compelled to suspend business at great loss, damage and inconvenience to proprietors thereof and to patrons.

This complaint alleges that the defendant companies at various times during the fall of 1917 assured patrons that an adequate supply of gas had been arranged for and would be available, and that the relators relied upon such assurances. It is alleged that the defendant Oklahoma Gas & Electric Company has compelled consumers to pay bills promptly, regardless of the cause for unwillingness of the patron to do so, and has discontinued gas service on failure to pay promptly, and threatens to discontinue service for all consumers who refuse or decline to pay such bills, regardless of the

defense against such claims. These relators pray that this Commission restrain said defendant company from so forcing collection of such gas bills, pending determining of the issues herein.

198 Complaint in Cause No. 3197, Selby et al. against the two corporations above mentioned, alleges that said corporations are in contempt of Corporation Commission's Order No. 1028 requiring gas companies to so construct, equip and maintain pipe lines and mains and distributing systems as to be able at all times to furnish an adequate supply of gas for domestic consumption and to furnish and supply at all times an adequate amount of the proper quality for heating, cooking and lighting. This complaint represents that said corporations have failed in all respects to comply with said Order, particularly from December 8 to December 13, 1917, inclusive. This complaint makes allegations similar to those already referred to as in the preceding complaints in the matter of danger to public health and interruption to business, alleging that at least one death has occurred on account of such conditions. It contains allegations similar to those in the complaint of Ruth et al., alleging frequent inadequacy of service through a period of years, insufficient construction and maintenance of pipe lines, and failure to provide storage. This complaint alleges that the corporations above named have practically the same stockholders, more than 50% of the stock of each being owned by "a certain foreign corporation." It reviews the franchise held by the defendant, the Oklahoma Gas & Electric Company, and alleges failure to perform services as required hereby. Complaints in this Cause (No. 3197) pray that this Commission take full charge, control and management of the said corporations, to the end that the rights of the public may be protected against results of the failure to perform the duties of said corporations to the public, and that said corporations, and each of them, be adjudged to be in contempt of this Commission and dealt with accordingly.

199 Separate answers were filed by the two defendant corporations in causes 3188 and 3197, and the defendant, Oklahoma Gas & Electric Company, filed its answer in cause 3192.

The Oklahoma Gas & Electric Company in its answer in cause 3188 (Ruth, et al.,) says that complainants have the same right as citizens of any city not supplied with natural gas, to procure fuel of other kinds. It admits that it has a franchise in Oklahoma City, but denies that it exercises the right of eminent domain for the purpose of supplying said cities with all the natural gas used by inhabitants thereof; it denies that it possesses a monopoly; it admits that there is a contract between it and the Oklahoma Natural Gas Company as alleged. It admits that on the dates in December, 1917, referred to in said complaint, that there was a shortage of gas in the City of Oklahoma City; it admits that it has not maintained any reserve supply, and says that it is not practical to maintain tanks for storage of natural gas in such quantities as would be necessary to have provided sufficient gas on the dates mentioned. It states that in the year 1916 there was sold in Oklahoma City natural gas to the amount of \$926,000.00 and that of this sum this defendant

received less than \$300,000.00 as its share under the contract with the Oklahoma Natural Gas Company referred to; that if storage capacity adequate to take care of a shortage during the period covered by the complaint herein were ordered, at the expense of this defendant, it would be subjected to a loss of not less than \$900,000.00 per year, and if such storage were ordered at the expense of this defendant and its co-defendants, the said defendants would be subjected to an outlay of at least \$300,000.00 per year more than they

would receive for the sale of natural gas in Oklahoma City.
200

The defendant Oklahoma Natural Gas Company's answer is that it is engaged in transporting natural gas to be sold in Oklahoma City and other towns; that it conveys natural gas to the city limits of Oklahoma City where it delivers the same to the Oklahoma Gas & Electric Company for distribution; that it has been engaged in this business for ten years, during which time it has used every means within its power to deliver at all times an adequate supply of gas for all purposes, that it has furnished an adequate supply in Oklahoma City except on rare occasions, one such exception being a few days in December, 1917; that it has at all times furnished all gas which it can produce or purchase in the vicinity of its pipe lines and also that it has extended its main line to the Morrison field by building a twelve inch line northerly from Wellston, Okla., fifty-three miles, at a cost of \$800,000.00 which it was not bound in law to do. It alleges that its connection with the Morrison field, completed December 18, 1917, made available a new supply of approximately 20,000,000 cubic feet of gas per day, the capacity of its pipe line from such field. This defendant says that its original pipe line connecting Oklahoma City with the gas fields was a twelve inch line, from which was supplied not only Oklahoma City, but Edmond, Guthrie, Shawnee, Chandler, and various other towns; that said line was ample when constructed to supply the towns connected, but that Oklahoma City has grown since then from 30,000 to 100,000, Tulsa from 12,000 to 65,000, Muskogee from 20,000 to 35,000, and other towns likewise; that while this increase in population has occurred the gas supply available has shifted from place to place, original fields becoming depleted, new fields being reached at great expense, and they lasting but two or three years.

This defendant alleges that the various fields which it has reached have been exhausted by waste rather than by use.
201

while this company has done everything in its power to bring about conservation. It alleges that, in an effort to keep pace with the demand, it has, in addition to reaching out into new fields, built an additional twelve inch line from Oklahoma City alongside its original twelve inch line for a distance of thirty miles, to Wellston, thereby doubling its capacity, and that while other fuel has advanced in price the price of natural gas in Oklahoma City has not changed.

This defendant denies that it has failed to furnish an adequate supply of gas except on very few days; that it has not continually represented that there would be an adequate supply of gas in Oklahoma City, but has advised the public to have other fuel on hand

for emergencies. It denies that it has been negligent in construction or maintenance of its pipe lines or that storage facilities are either customary or practical as a means of providing a reserve supply of natural gas. It denies that its stockholders are practically the same as those of the Oklahoma Gas & Electric Company or that there is any common ownership or management of the two companies. It admits that the Oklahoma Gas & Electric Company has a franchise for the distribution of gas in Oklahoma City, but denies that the people of Oklahoma City have a right to depend entirely upon these defendants for fuel, averring that the reason the people wish to use gas is because it is cheaper and more convenient than other fuel, and not because other fuel is not available, and that the people have every opportunity of procuring other fuel that they would have if there were no natural gas to be supplied.

The answer of the Oklahoma Gas & Electric Company in Cause 3192, Donnell et al. and answers of both the defendants in cause 3197 Selby et al., respond to all the allegations hereinabove set forth, and responses to the material issues for consideration are reasonably well covered in the answers heretofore reviewed at length. In addition, however, the Oklahoma Gas & Electric Company denies that its failure to have provided an adequate supply of gas at all times is chargeable with the death of any person, and alleges that in its effort to provide all possible gas for domestic consumption it has deprived all industrial consumers, including its own plant for the generating of electricity, of the use of gas for fuel, thereby incurring a loss of many thousand dollars on account of the high cost of other fuel.

The hearing herein began on January 2, 1918, was resumed on January 11, January 17, and January 28, 1918. The complainants and numerous witnesses offered testimony supporting the general allegations of the complaint as to insufficiency of gas supply at the time specified, and there is no evidence to controvert the testimony on this point. Witnesses for the defendants supported the allegations in the answers as to the scope of service which the public has a right to expect from these defendants, as to the pipe line facilities and efforts of the Oklahoma Natural Gas Company to make such facilities adequate, and experts produced by the defendants were examined as to the scientific questions involved, having to do with pressure, volume, the number of heat units available under varying conditions, and as to the reasons making it impossible for conditions to be better at the times when the service was inadequate.

If the duty of this Commission lay in the strict enforcement of the letter of its every order and regulation, rather than in the prescribing and enforcement of such measures as will furnish to the public the greatest decree of relief for wrongs suffered by reason of service unperformed, the logical order as a result of the complaints and hearings herein would be a fine against either or both of the defendant corporations on account of failure to have complied with the requirements of Commission's Order No. 1028, but the Commission believes that its duty under the premises herein considered lies in action along a different line.

All reports, copies of contracts, and rules, regulations and evidences of practice by the defendant corporations on file with the Corporation Commission are regarded as a part of the record in this case to the extent that they throw light upon the issues and assist in arriving at a fair conclusion thereupon. There reports show that the Oklahoma Gas & Electric Company operates under a franchise as alleged, and furnishes natural gas to approximately 11,500 domestic consumers. The distributing system reaches all sections of the city of Oklahoma City. The gas is introduced into the distributing system at the city limits and delivered to consumers through thirty regulators or other stations at which record is made of the pressure in ounces at each such point.

Counsel for the Oklahoma Gas & Electric Company handed to a witness a copy of the "Gas Customers' Hand Book" which it was stated, is furnished to all consumers, and called attention to a paragraph on page 5 advising consumers that

"Periods of extreme cold weather sometimes cause a brief demand for gas which no practical and financially possible transmission system can fully supply. Because of this fact and the further fact that any long distance pipe line is liable to damage from floods and other unavoidable causes we advise our customers to obtain some kind of auxiliary heating apparatus, for use in possible emergency."

The Commission notes on page 4 of said Hand Book the following:

"The Oklahoma Gas & Electric Company earns its wages. It wants no revenue which does not rightfully belong to it for service performed."

The Commission is sure that the public wants service and is willing to pay a reasonable price therefor. The above assurance of the Oklahoma Gas & Electric Company that it wants no revenue which does not rightfully belong to it for service performed clearly indicates that an adjustment of the differences arising between the company and its patrons by reason of inadequacy of service as alleged and proved in this case not only is the solution of the present problem which the Commission must prescribe but the one which this company itself must expect.

The Oklahoma Natural Gas Company is the secondary party in interest as between the two defendants. The contract referred to in testimony whereunder it supplies gas for distribution in Oklahoma City provides that it shall receive as compensation therefor two-thirds of the collections of the Oklahoma Gas & Electric Company for gas furnished the public. An adjustment fair to the distributing company and the public, therefore, must be presumed to be fair to the pipe line company, and will be so held.

265 Section 18, Article 9, Constitution of Oklahoma, reads as follows:

The Commission shall have the power and authority and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies," etc.

The same section provides further:

"Upon the request of the parties interested, it shall be the duty of the Commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons and employees."

Chapter 93, Session Laws 1913, State of Oklahoma, is entitled as follows:

"An Act to extend the jurisdiction of the Corporation Commission over the rates, charges, services or practices of water, heat, light, and power companies, and to give said Commission general supervision over such utilities, and declaring an emergency."

Section 3 of said act reads as follows:

"Implied Powers of Commission—Contempt—Section 3.—In addition to the powers enumerated, specified, mentioned or indicated in this act, the Commission shall have all additional implied and incidental powers which may be proper and necessary to carry out, perform and execute all powers herein enumerated, specified, mentioned or indicated," etc.

The question of the jurisdiction of the Commission to grant the relief prayed for in the three complaints herein, was not raised by either of the defendants as to any of the several kinds of relief sought. It appears to the Commission, however, that the question for determination in the interest of the public is to what extent the service performed by the defendant company was inadequate, and whether collection by the said company of a full price for such service as was rendered would constitute extortion or be otherwise unreasonable or unjust. For this reason the authority of the Commission under the laws of the State to deal with this specific question has been set forth above.

A recent case before the New York Public Service Commission, 1st District, decided October 13, 1917, and reported in P. U. R. 1918, page 357, entitled "Re Heating Standards for Gas" appears to involve a principle applicable to the case herein considered.

In New York the rate for gas is prescribed by statute and is not subject to change by the Commission. The Commission was requested by the Federal government to authorize utilization of certain substances found in the gas in New York City, such utilization involving deterioration of the gas for fuel. Chairman Straus of that Commission, discussing the effect upon the rates

charged by the gas company of an order complying with such request of the Government, said:

"The Commission does not have the power directly to authorize a higher rate for gas than prescribed by the law; and while it has the power to change the standard of the quality, it does not appear to have the power indirectly to do what it cannot do directly, that is, by lowering the quality to force consumers to use a greater quantity of gas to secure service equivalent to that received under the present statutory quality, and thus produce higher bills to the consumer. The Commission would seem limited to a consideration of a change of standard for the measurement of the quality of gas now legally required. This, however, does not prevent the fixing of a scale of correspondingly decreasing quality and rate."

In Oklahoma the rate for gas is not fixed by statute, but is subject to control by the Corporation Commission; neither is the quality of gas to be supplied regulated by statute. In Oklahoma, however, as well as in New York, quality of service has an inevitable relation to the rate charged therefor, and deterioration in quality without relative decrease in rate is equivalent to an increase in rate. Quality of service, if not fixed by statute in Oklahoma, is fixed by custom, and the evidence of the Oklahoma Gas & Electric Company in this case shows that natural gas service under pressure of less than four ounces is subnormal.

The Commission in Order No. 1028 (1916 Annual Report, Page 47), discussing the subject of service, said:

"Gas has been defined as a commodity (West Attorney General vs. Kansas Natural Gas Company, 221 U. S. 229, Law Ed. 715) and the distributors usually charge for same according to the amount furnished (whether measured accurately by meter, or approximately by flat rate); but the situation is that even if as a matter of law the consumer buys a commodity, as a matter of right he is entitled to service. An inadequate supply of gas though expensive, affords poor service. The grantor or beneficiary under franchise (who usually enjoys a monopoly) undertakes to render service to the public—not merely to supply a commodity, which when furnished in insufficient quantity is of no practical benefit, although, as above said still expensive, therefore gas distributors should not only furnish gas, but should supply the same in sufficient quantities to meet the needs of the communities served, and thus render competent and satisfactory service.

The extent to which service performed has been inferior in quality will be determined as nearly as is possible from information available, and a settlement between the Company and its patrons upon that basis will be prescribed.

209 The Company's manager stated that four ounce pressure was considered normal, the inevitable deduction being that service at less than four ounce pressure is inferior and this is true as a matter of fact generally.

The record transcript of proceedings January 17th at page 5, speaks on this subject as follows:

Mr. Gray:

Q. Mr. Molinard, what is the normal pressure which you attempt to maintain to supply to the various customers of the company?

A. Four ounces all over the country is the normal pressure that they give, but we give the customers the benefit of a higher pressure than that probably, say 90 per cent, conservatively, of the year.

The witness explained that the record of pressure is kept by the company at approximately thirty recording stations in Oklahoma City, the record being kept by a recording pressure gauge at each regulator, such gauge being operated by something like clock work, and, when in proper working order, recording the pressure at each hour of the day or night. Charts are designed to record pressure for seven days. In accordance with the agreement of this witness on the stand the company furnished to the Commission the pressure gauge charts from regulators stations for the months of December 1917, and January, 1918.

The witness explained on the stand that extreme cold weather sometimes interferes with the proper working of these gauges by causing clocks to stop and the charts furnished to the Commission indicate that there was considerable trouble of this character during the months involved. There is sufficient evidence, however, in the charts available, to enable the Commission to determine the character of pressure maintained at all times and at all stations. Where the clock at a certain station is shown to have stopped at a certain time, comparison of the record of another station showing substantially similar pressure has been considered an indication of what the complete record for such station would have probably shown. The number of comparisons where such indirect evidence of pressure has been used is small. The Commission has taken the pressure at the regulator in each case to indicate pressure delivered to the consumer. It is evident, however, and admitted in testimony that the pressure actually delivered to the consumer is less than the pressure at the regulator depending upon distance of the consumer from the regulator. It follows, therefore, that in using the figures that have been the basis for the Commission's conclusion as to the extent of the insufficiency of service, there is a certain element of doubt which has been resolved in favor of the defendants. On the other hand there are instances where, in order to avoid a too burdensome complication of the necessary adjustment between the defendants and the public, the records from several regulators have been compared or combined on what appeared to be a reasonable average involving concessions in some instances in favor of the defendants, and in others favorable to the public.

In computing the extent of the insufficiency of service the Commission has considered that the defendants assumed to give service during twenty-four hours each day, and an analysis of the evidence furnished by the pressure charts has enabled the Commission to determine the number of hours in each month in which service was

less than normal. Full credit has been allowed the defendants for each hour where pressure was four ounces or better. Hours where pressure was three ounces have been rated at 75% normal, two ounces, 50%; one ounce, 25%, and less than one ounce none, way of illustration:

12 hours at 3 oz. pressure were considered 9 hours normal.

12 hours at 2 oz. pressure were considered 6 hours normal.

12 hours at 1 oz. pressure were considered 3 hours normal.

12 hours at less than 1 oz. pressure were deducted in whole from the total number of hours in the period.

212 The plan of adjustment above outlined, the Commission realizes, does not account for the amount of gas actually consumed at pressures less than four ounces, as contended for by the gas companies, and as verified, or rather asserted by gas engineers and hand-books.

On this point the Ohio Commission advises the Oklahoma Commission as follows:

* * * The meter will register the same amount of gas regardless of delivery pressure. In other words, domestic meters measure volume irrespective of pressure. The relation of pressure to heating value is illustrated as follows: One thousand feet of gas at atmospheric pressure will give a certain amount of heat. The heat of one thousand feet of gas under one ounce pressure will give the equivalent of 1004.2 feet; under a 2 ounce pressure 1008.5 feet; under 3 ounce pressure 1012.7 feet; under 4 ounce pressure 1017 feet; under 5 ounce pressure 1021.2 feet; and under 6 ounce pressure 1025.5 feet.

This closely accords to the testimony given by Dr. De Barr of the University of Oklahoma, and others who testified upon this subject at the hearing before the Commission.

On February 11, 1918, the Oklahoma Gas & Electric Company filed with the Commission a letter referring to certain meter tests made, and our Oil & Gas Department concerning this, has the following to say:

"To the Commission:

In response to the attached communication from the Oklahoma Gas & Electric Company, in reference to test made in presence
213 of the Commission's representative, Mr. Wiseman, on February 7, 1918, the following is Mr. Wiseman's report:

"Date on test of small tin gas meter in test room of the Oklahoma Gas & Electric Company with $\frac{1}{2}$ " pipe from the regulator to the meter about 20' with six (6) elbow bends. About 4' $\frac{1}{2}$ " pipe from meter to stove. Stove was small heater with no mixer for the supplying of air to aid combustion.

Tests were made as follows:

Pressure in ounces.	Cu. ft. of gas registered on meter.	Length of test in minutes.
8	5	3
7 ¹ / ₂	4.85	3
7	4.7	3
6 ¹ / ₂	4.6	3
6	4.5	3
5 ¹ / ₂	4.3	3
5	4	3
4 ¹ / ₂	3.8	3
4	3.6	3
3 ¹ / ₂	3.4	3
3	3.1	3
2 ¹ / ₂	2.8	3
2	2.5	3
1 ¹ / ₂	2.1	3
1	1.65	3
¹ / ₂	.98	3
¹ / ₄	.6	3

214 The result of the test shown in their letter is exactly the same as Mr. Wiseman's.

We were taking off some accounts previous to the hearing for an increase in electric rates, when we happened to discover that they were making this test. Therefore Mr. Wiseman stayed during the test with the result of the above report.

This department has not made a report to the Commission on this particular test for the reason that the same was not an official test on our part.

We are making tests today which will be before the Commission as soon as results are compiled.

Respectfully submitted,

(Signed)

A. L. MITCHELL,
Gas & Electric Department.

Oklahoma City, Oklahoma, February 22, 1918."

The Bureau of Mines, in a letter to the Commission, has this to day of gas meters, to-wit:

"All gas meters have proven unsatisfactory at times, and cause unlimited litigation and trouble. The orifice meter is much more accurate than the proportional type, and should be used in measuring the large quantities of gas, but cannot be used for domestic or small commercial service. We have always considered a meter as more of an umpire than an absolute scientific measurement of the gas, each party being willing to abide by the recorded amounts until they were clearly wrong and beyond tolerance by one side or the other. When carefully watched and tested there is no

reason why a meter cannot be kept in such condition that neither party shall have a grievance which cannot be compromised."

The plan suggested is supported by the testimony of those who found their meters running while they got no heat, and has a basis of justice in the "quantum meruit" of service rendered by the defendants, and the satisfaction received by the people—for as stated in Order No. 1028 supra, "the grantee of or beneficiary under a franchise undertakes to render service to the public,—not merely to supply a commodity, which when furnished in insufficient quantity is of no practical benefit."

Computation of deficiency of service was made for each month separately.

Had pressure been equal at all points throughout the city deduction of uniform percentages, respectively, from the bills furnished for December and January would have been a fair basis for adjustment. Such, however, was not the case. The pressure charts show that in several sections of the city pressure, while less than usually furnished by the company, was at no time less than four ounces. In other sections there were long periods on many days where pressure was less than one ounce. Every step on the scale between

216 zero and four ounces was recorded on every day of extreme cold weather at some point or points in the city. This condition imposed upon the Commission the task of determining boundaries for districts where pressure could be reasonably construed as approximately uniform, and working out an adjustment basis for each of such districts. In arriving at conclusions as a basis for determining the boundaries of such districts it has been necessary to make a study of the distributing system of the Oklahoma Gas & Electric Company from its maps, and to take into consideration such matters as location of high pressure mains, distances from regulators, density of population indicating relative number of consumers within each district, etc. It must be borne in mind that the percentage of insufficiency of service found by the Commission does not mean that such percentage of service was uniform throughout the month. In nearly all parts of the city pressure was below normal on extreme cold days, and as already suggested, in certain sections was zero on such days, but the percentage of insufficiency for the month takes into consideration not only such days

but the far greater number of days when service was sufficient. 217 While the Commission's records are complete as to ownership of the two defendant corporations, this question has not been regarded as material, it may be said however, that there is no evidence to support the allegations in the complaint touching the subject.

The question of the feasibility of storage facilities for a reserve supply of gas must be decided, as far as the record in this case is concerned, against the contention of the complainants. Their allegation that such relief is reasonably available is not supported; the fact is that it is impossible.

The effect of the installation and operation of absorption plants

for the extraction of gasoline from the gas in transportation through the pipes of the Oklahoma Natural Gas Company before delivery to the Oklahoma Gas & Electric Co. was raised in the testimony. The defendants state that there are four absorption plants on the lines of the Oklahoma Natural Gas Company through which gas is supplied to Oklahoma City, but contend that the operation of these plants in material degree causes reduction of the calorific properties of the gas. Dr. Edwin De Barr, Chemist at the Oklahoma State University, for twenty-five years, and Director of the School of Chemical Engineering, testified as follows:

Mr. Ames:

"Q. Does the extraction of the gasoline content and the water that may be in the natural gas make it an inferior fuel?

"A. Practically no reduction. Possibly there might be a reduction of from 1 to 2 per cent in its B. T. U. unit value, that is, its burning unit value. My authority for stating that is Bulletin No. 130, published by the Fuel Administrator of the United States, Mr. Burrell."

Other witnesses before the Commission in this and other cases have testified to the same effect. The bulletin referred to by Dr. De Barr, in its summary on the subject of the absorption method of extracting gasoline from natural gas, says:

"The removal of gasoline does not reduce the heat value of the gas to an appreciable extent. In the case of natural gas from two fields that the authors of this paper experimented with, extracting the gasoline lowered the heat value only 3 per cent in one case and 12 per cent in the other."

The Public Utilities Commission of Ohio, in discussing this point in a letter to the Commission, has this to say:

"Average natural gas containing gasoline produces about one pint per thousand cubic feet. There is very little loss of heating units in the removal of gasoline, from the fact that there is a shrinkage in each thousand cubic feet of about forty feet of gas, and the heating units in the remainder would not be affected over one per cent."

The Bureau of Mines working under the Department of the Interior advises the Commission as follows:

"So-called dry gas in Oklahoma or any field which contains enough of the higher hydrocarbons to make their extraction profitable, is always a gas of exceptional B. T. U. value. Even after the drying of these gases they have B. T. U. values far above that of pure methane, due to the ethene and other higher members which are not condensed by the absorption or compression treatments."

"Regarding the actual losses of B. T. U. value, we will quote Mr. Goldison's complete tests to determine the losses:

"The reduction in heating value due to the recovery of the gaso-

line content can be closely estimated. Suppose a given gas has gasoline content of 100 gallons of gasoline per million feet of gas or .0001 gallons per cubic foot of gas. The gasoline made by the absorption process will cause a shrinkage in volume of the gas treated, each gallon of gasoline being equal to about 35 feet of vapors. The .0001 gallons of gasoline extracted from one cubic foot of gas would cause a shrinkage of $.0001 \times 35$, or .0035 cubic feet, leaving, out of each cubic foot treated, .9965 cubic feet available for marketing. Now, gasoline of the nature made by this process has a heating value of about 20,400 B. T. U.'s per pound and is of about 80 Baumé gravity, or $5,549 \times 20,400$ or 113,200 B. T. U.'s per gallon. The .9965 gallon extracted from one cubic foot of gas would contain $113,200 \times .9965$ or 113 B. T. U.'s.

"If the gas contained before treatment 1,000 B. T. U.'s per cubic foot, the residue of .9965 cu. ft. would contain 1,000 minus 113 or 988.7 B. T. U.'s. If .9965 cu. ft. contain 988.7 B. T. U.'s, the heating value per cu. ft. is 988.7 divided by .9965, or 992.17 B. T. U. per cu. ft. Thus the extraction of 100 gallons per million of gasoline from a gas of 1,000 B. T. U.'s heating value results in a reduction of 992 B. T. U.'s or .8 of 1%. The effect on gas of any other heating value of gasoline yield can be similarly calculated.

* * * * *

"The reduction in heating value noted above is so small as to have no effect on the value of the gas to the consumer, and of this total reduction a portion takes place during transmission of the gas without an absorption plant, due to the natural condensation of gasoline in the transmission lines. This condensation has been a source of endless trouble and expense in the past, due to the effect of the condensate upon rubbers used in pipe line couplings, and the elimination of this trouble and expense has been the prime reason for the installation of some of the largest plants.

* * * * *

"* * * Even though a drying plant reduces the B. T. U. value two per cent, if the drying plants were not in use the condensate collecting in drips would and always has reduced the heating value at least half this much—but until the drying plants were installed this feature was considered natural and no thought given to it. As a matter of fact, it is an immaterial point, since the varying and inefficient methods of burning gas far outweigh and hide any variation in its B. T. U. value as small as one or two per cent."

During the acute periods wherein patrons suffered from cold on account of lack of gas, the absorption plants on the gas lines were not in operation. During this time in the oil and gas field lease operations were suspended largely on account of inability to use gas as a fuel, gas lines on leases being generally frozen up and even railroad engines performed indifferently and

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some of them not at all on account of inability to keep up steam. And during these times operators of absorption plants were unable to keep the same running on account of the freezing of water lines, stove lines, sprayers, etc.

All authorities contributing to the information of the Commission agree that the extraction of gasoline from natural gas by the absorption process produces a more uniform commodity for delivery to the public and that in the absence of the application of such, or some similar process, the amount of gasoline and moisture in gas transportation lines collects at the low points and reduces the varying capacity of the pipe and in some instances nearly, if not wholly, obstructs the passage of gas.

In these proceedings it has been asserted that the transportation company has been negligent in failure to extend its lines to other and more abundant sources of supply. The record shows (and the testimony on this point is undisputed and hence presumably bona fide) that in 1916 the officials of the company conceived the project of extending its lines to the Kay County field near the Kansas line and to the Loco field near the Texas line, that they endeavored to secure gas of the owners of gas wells in those fields; that they found such owners reluctant to bind themselves for future delivery to a company with no pipe line facilities in the particular localities involved, that the officers for and on behalf of the company undertook to secure pipe for the extension of its lines; that they found the steel mills overrun with orders, unable to make prompt deliveries and therefore unwilling to accept orders and promise such deliveries; that nevertheless they succeeded in placing an order for sufficient pipe to extend from the main line of the company to the Morrison field; that delivery was promised in ample time to allow the construction of a branch line into the Morrison field before the winter of 1917-18 but that on account of conditions the mills were unable to make deliveries of pipe as ordered; that thereupon the company borrowed pipe and by prematurely abandoning a failing field redeemed other pipe and thus finally succeeded in reaching the Morrison field, but not, however, until the present supply of the transportation company had become so short as to be insufficient for the proper accommodation of all its patrons. And, too, the pipe lines thus laid being not of material selected by choice, but of that compelled by emergency, proved too small to afford sufficient gas in times of stress brought on by abnormal cold weather. Thus viewing the situation in the light of the facts as they are and laying aside all bias naturally arising on account of unsatisfactory service, the justice of the situation impels the conclusion that the charge of negligence in this respect is unfounded and unreasonable.

The Commission has been asked why it does not order the Oklahoma Natural Gas Company to extend its lines to other fields. The validity of such requirement, since the failure of the former sufficient supply of gas, is apparent from the record in this case and on the record made the Commission is not called upon to determine the validity of such requirements and thus foreclose the point in order that all parties may have the benefit of the argument

of the company and thus be prepared to more fully advise the Commission, should further occasion arise, the position of the company on this point is set forth as stated by counsel, and is as follows:

223 "In its organization its main purposes were to acquire by purchase, lease or otherwise land in Oklahoma, Indian Territory and elsewhere containing natural gas, oil and other minerals, and also to acquire the natural gas, oil and other minerals themselves, and to sell the same, and to build and maintain pipe lines through which to convey the same to the purchasers. By the terms of its charter its operations are not restricted to Oklahoma, but may extend into any state. It was granted its charter under no special act of the legislature, which placed any positive or affirmative duty upon it, but its charter was the general incorporation law of the Territory of Oklahoma under which it filed its articles of incorporation, and the powers granted were permissive only and not mandatory.

"Judge Marshall, United States District Judge for the District of Utah, sitting in the District Court of the United States for the District of Kansas, on July 24, 1913, passed upon the question suggested by you in the case of Fidelity Title & Trust Company v. Kansas Natural Gas Company, 219 Fed. 614. There the Kansas Natural Gas Company, an organization similar to the Oklahoma Natural Gas Company, was in the hand of a receiver, and the Kansas Public Utilities Commission has ordered the receiver to extend the line of the Kansas Natural Gas Company to new supplies of gas. The receiver applied to the Federal Court for directions as to whether he should comply with the order or not, and the Federal Court held that compliance could not be required, and directed the receiver not to comply with the order of the Commission. In the opinion the Court said:

224 "The Kansas Natural Gas Company is a foreign corporation. It was duly admitted to do business in Kansas. The business it was authorized to do and was in fact engaged in was the obtaining of supplies of natural gas by purchase or by lease of wells and the transportation of this gas by pipe lines to various cities in Kansas and adjoining states, where it was sold to local public service corporations or to manufacturing plants. It was not a common carrier, but it was granted the right of eminent domain, and its business was such as to give the public an interest in it. By reason of the entry into Kansas, and the grant to it of the right of eminent domain, it entered into an obligation to the state to the extent of and with respect to its property devoted to this quasi-public service that prevented its abandonment of that service. The bondholders took their mortgage with notice of this fundamental obligation and subject to it. On foreclosure, the purchaser must buy the property subject to the same duty. The state, because of the public interest, has the power to prescribe reasonable rates for gas sold and to secure the efficiency of the service by reasonable regulations, and it is not to be doubted that a receiver of the property of the corporation must operate it in accordance with valid state laws in respect

thereto. But what are the limits of the duty to the state or public? There was no specific contract or charter provisions, no exclusive right granted so as to imply a contract to supply the full needs of those depending on the monopoly and for whose interest the grant was made. The action of the state was only permissive. The company was not obliged to build any pipe line or to furnish
 225 any gas, so far as it availed itself of this permission, its property used for the quasi-public service, was affected by the public interest, and its use of the property in this business was subject to valid state regulations, but it did not become a mere agency of the state, and was under no obligations, contractual or other, to increase its investment, or build new lines. It did not manufacture gas. It purchased wells and transported gas by pipe line. These wells were gradually exhausted. The lines were extended and more distant wells obtained until the system extended into several states. The security of the bond holders is constantly dissipated by the consumption of the property, and this method has led to the insolvency of the corporation. If by its entry into Kansas the company entered into an obligation to constantly buy new wells and extend its lines to new gas fields so as to constantly furnish to the cities of Kansas an adequate supply of gas, the security of the bondholders was indeed illusory. The undertaking was one necessarily ending in bankruptcy.

It is well settled that a railroad company chartered to build a particular line under a permissive charter is not liable to the State for a failure to build it, and that only so far as it does build is its property affected by the public interest. *York, etc., vs. Regina*, 1 El. & Bl. 858, 864; *Edinburgh, etc., Ry. Co. v. Philip*, 2 Pacqu. App. Cas. 526; *State v. Southern Minn. R. R. Co.*, 18 Minn. 40 (Gil. 21); *Weymouth v. Penobscott Log Driving Co.*, 71 Me. 29, and a fortiori, that such a company cannot be required to construct a new or branch line. I know of no reason why this well settled principle is not applicable in this case.

226 "This is the only case we know of where the question has been directly passed upon as to gas pipe line companies. In the case of *A. T. & S. F. R. R. v. Railroad Commission of California*, 160 Pac. 828, the Supreme Court of California held that under the Public Utilities act of that State authorizing the Railroad Commission to order, after hearing, additions, extensions, repairs or improvements, the Commission had no power, where a branch line of railway had been destroyed and service thereon discontinued for about twenty years, to require the railway company to re-establish that branch line; and that to compel a railway company to apply its property to the construction and operation of a line of road which it does not desire to construct or operate is to take its property without due process of law.

"In the third syllabus the court said:

"Under section 36, Public Utilities Act (St. 1911—Ex. Sess.—Page 36). Authorizing the Railroad Commission to order, after hearing, additions, extensions, repairs or improvements to the existing plant, equipment, apparatus, facilities, etc., of a public utility, the

Railroad Commission had no power to require a railroad company to extend its line of railroad or to build a new line to connect with its existing line points which have not theretofore been connected, and which the company has not undertaken so to connect, since a railroad company, constructing a line between given points, does not undertake to supply the transportation needs of any territory not reached by its lines."

227 "In the case of *Public Service Commission of Maryland vs. Philadelphia, Baltimore & Washington R. R. Co.*, 89 At. 726, the Court of Appeals of Maryland said in the second and third syllabi:

"Where a railroad branch line has been abandoned more than 12 years prior to the passage of public service law (Act April 5, 1910 c. 180; Code Pub. civ. Laws, art. 23, Secs. 413-433), the Commission had no jurisdiction to compel the railroad company to rebuild and operate it.

"Acts 1856, c. 118, Sec. 12, authorized a railroad company to locate and construct a railroad from the water of Chesapeake Bay in Kent County through to the north side of Sassafras River in Cecil County, or to some other point on the line of Queen Anne's Kent Railroad as might be deemed advisable, and also to locate and construct branches to points in Kent County as might be deemed advisable; Held, that the charter was merely permissive, and not mandatory, and hence a railroad company and its successors could not be compelled to complete or maintain a branch line after it had been found unremunerative."

"In *N. P. R. R. Co. vs. Dustin*, 142 U. S. 492, Justice Gray said: "If the charter of a railroad corporation simply authorizes the corporation, without requiring it, to construct and maintain a railroad to a certain point, it has been held that it cannot be compelled by mandamus to complete or maintain its road to that point, where it would not be remunerative."

228 "As we observed above, the charter of the Oklahoma Natural Gas Company is merely permissive, and is not mandatory, and if it would be compelled to construct a line to new fields upon the exhaustion of those fields it could be required to again extend; and, as stated *in* Judge Marshall in the case first above cited, such an undertaking would be one necessarily ending in bankruptcy.

"Furthermore, it was held by the Circuit Court of Appeals of the Eighth Circuit in the case of *Haskell v. Cowham*, 187 Fed. 40, and by the Supreme Court of the United States in *West v. Kansas Natural Gas Co.*, 221 U. S. 229, and in *Haskell v. Kansas Natural Gas Co.*, 221 U. S. 217, that natural gas is property; that while in the earth it is realty and belongs to the owner of the land and what brought to the surface is personal property, and that the same is legitimate subject of interstate commerce, and that it is not within the power of a state to forbid or prevent a sale of the same in interstate commerce. It will readily be observed that the transportation and sale of natural gas, the same being property and an article of commerce, is a very different thing from the performance of a service.

pure and simple, such as a railway company, a telegraph company, a telephone company and other similar public service institutions perform. There they sell no commodity or property, but render a service pure and simple. And it seems to us that when it is held that gas is personal property and a legitimate subject of interstate commerce whose sale in interstate commerce cannot be forbidden, this may be used as a test to determine the power of the state to require a company to extend its line for the purpose of getting gas to sell to a particular person, corporation or community. In other words, even if the Oklahoma Natural Gas Company extended its lines and acquired gas, it is not within the power of the state to prevent it from selling the gas in interstate commerce, and to require it to sell it to a particular person, corporation or city.

The Oklahoma Natural Gas Company, we understand, has never exercised or sought to exercise the power of eminent domain, but has always acquired its right of way by purchase through private negotiations. If we assume, however, that in so far as its pipe line is concerned it could acquire its right of way by condemnation, yet it is not within its power to acquire either gas, gas lands or gas leases by condemnation. It has no power to require anybody to sell it gas, gas lands or gas leases, and we think that this fact is conclusive that it may not be required to extend its line to any field. As was said by the Supreme Court of California in *A. T. & S. F. R. R. Co. v. Railroad Commission of California*, supra, 'the duty to maintain the line was dependent upon the right to maintain it'; and here the duty to acquire gas in remote fields is dependent upon the right to acquire gas, and the Oklahoma Natural Gas Company has no right to acquire gas unless the parties owning the same are willing to sell the gas to it. The Oklahoma Natural Gas Company's right to acquire gas is wholly dependent upon the owner's willingness to sell. It is conditional and not absolute. And the Commission is wholly without power to require any owner of gas land, leases or wells to sell its gas to the Oklahoma Natural Gas Company.

"A company dealing in natural gas, even though it be a public service corporation, occupies a different status from that occupied by artificial gas companies and electric light companies, and the difference is this: Artificial gas companies and electric companies undertake to give service generally. They manufacture their service; their supply has no natural limits, and they therefore go on perpetually; whereas, a natural gas company undertakes to furnish gas only so long as its supply lasts, and it is known that the supply is limited and subject to exhaustion. Under these circumstances the rule applicable to artificial gas companies and electric light companies is not applicable to a natural gas company. The latter owns certain fields, and therefore a certain amount of gas; it undertakes to furnish only what it has, and it never is tenant with anybody to purchase new gas fields. It may do so if it wishes and is able to do so, but whether it shall do so is solely a question for it to determine.

Thus, Mr. Wyman, in his work on *Public Service Corporations*, section 271, says:

"Where the supply that is offered has a natural limitation, it will usually be found that the profession (to serve) is limited to the exploitation of that supply. Thus a company which undertakes to supply natural gas from a given field cannot be held liable for the failure of the supply to meet the demands of the community."

231 "Again in section 652 the same author says:

"In irrigation we have a typical case of natural limitation. When the flow of a stream is diverted by irrigation works, the profession of the managing company may fairly be said to be confined to the water that may properly be appropriated. It is consequently under no duty to provide other sources of supply even against recurrent drouth, as its obligation is limited to the proper diversion of the appropriated water. Only while it has available water is it bound to supply applicants."

"Furthermore, it was not contemplated by the laws of Oklahoma that a gas pipe line company may be required to extend its line into other fields. Thus by chapter 99 of the Session Laws of 1913, making gas pipe lines common carriers and common purchasers, it is provided by section 3 that gas pipe line companies shall purchase all the natural gas in the vicinity of or which may be reasonably reached by its pipe, lines or gathering branches; and again by chapter 197 of the Session Laws of 1915 providing for the conservation of gas, it is provided in section 5 that a gas pipe line company shall purchase all the natural gas which may be offered for sale, and which may be reasonably reached by its trunk lines or gathering lines."

"It will thus be observed that the proximity of the gas to trunk lines of gathering lines of the pipe line company is the test prescribed by the legislature as to the obligation of the pipe line company to purchase the gas; and there is not only no intimation 232 of an obligation on the part of the pipe line company to extend its trunk lines or gathering lines to the gas, but on the contrary such obligation is plainly negatived."

"It must also be remembered that the power of the Corporation Commission over this subject is purely legislative, and under the provisions of the constitution it can exercise such power only in subordination to the legislature; and the power having been given by the statute, the same is measured and limited by the statute. As was said by the Supreme Court of Florida, in *Atlantic Coast Line R. R. Co. v. State*, 74 So. 595:

"The railroad commissioners are statutory officers whose power are special and limited. They can exercise only such authority as is legally conferred by express provision of law, or such as is by fair implication and intendment incident to and included in the authority expressly conferred for the purpose of carrying out and accomplishing the purpose for which the offices were established. Any reasonable doubt of the existence in said commissioners of any particular power should be resolved against their exercise of such power."

"To the same effect also are *Cincinnati v. Public Utilities Commission* (Ohio), 117 N. E. 381; *State ex rel. Public Service Commission of Missouri* (Mo.), 102 S. W. 958, *Public Utilities Commission*

Wabash R. R. Co. (Ill.), 113 N. E. 162; People ex rel. v. Public Service Commission, 157 N. Y. 703.

233 "Even if it could be held that the Commission has the power to require the Oklahoma Natural Gas Company to extend its pipe lines to new fields remote from the sources of supply to which it has voluntarily built heretofore, which we think cannot be done, yet the power, if it existed, would be one which the Commission should in the very nature of things exercise very cautiously; and it would be bound to see to it that such extension was not of unreasonable length, did not require an unreasonable outlay, that the supply of gas to which the line was to be built was in vast quantities, and not quickly exhaustible, that the pipe line company could acquire same at a reasonable price, and that the return which it could make upon the outlay thus required would be sufficient to compensate it for such outlay. This is held by this Commission to be the rule even in requiring extensions of gas and electric companies in cities operating under a franchise where ordinarily there is no question of the Commission's power to order such extensions.

"All public service Commissions in ordering extensions within cities follow that rule; and that is the rule laid down by the courts. Thus in People ex rel. N. Y. & Queens Gas Co. v. McCall, 157 N. Y. Supp. 707, the Supreme Court of New York said in the syllabus:

234 "Under Public Service Commission's Law (Consol. Laws, c. 48) Sec. 66, Subd. 2, empowering the commission to order reasonable improvements and extensions of the lines, conduits and other apparatus and property of gas companies, the court may determine, upon a review of the determination of the commission, whether an order for the extension of the mains of a gas corporation was reasonable extension.

"An order of the Public Service Commission requiring a gas company supplying the town where its plant was located and the adjoining town with gas, to extend its mains to serve a community of about 230 houses, already supplied with electric light, so that gas would not be required for illuminating purposes, but only for cooking and possibly heating during the summer months, none of which houses were piped for gas, and requiring substitution of 6 inch pipes for 4 inch pipes for a distance of 5 miles, which, upon the estimated consumption at the price the company was authorized to charge, would give a net income of about \$1,600 a year, allowing nothing for interest on bonds or dividend stock, and presumably requiring the company to borrow from \$60,000 to \$70,000 for the new construction, the interest on which would exceed the net income, was unreasonable, and, would be annulled."

"Again in Zeilds Forsee Inv. Co. v. St. Joseph Gas Co. 195 S. W. 52, Kansas City Court of Appeals of Missouri said in the second syllabus:

235 "A gas company is not bound to extend its mains to territory not occupied by it, unless required to do so by statute, ordinance, charter or contract, although it may have the privilege to occupy all streets and even under statute it is not required to extend

mains unless the property is within a "reasonable distance" or there exists a reasonable expectation that the consumption of gas will warrant the necessary expense.

"The quantity of gas obtainable in any field, and the relative life of the field, when considered in connection with the cost of reaching a remote field, makes it extremely hazardous for the Corporation Commission to undertake to direct a pipe line company against its will to build at a large cost an extension into such field, even if the Commission has the power. And when we consider the vast amount of capital which the Oklahoma Natural Gas Company has invested, and the fact that such capital will be lost unless the company maintains itself as a going concern, and the fact that it is therefore a matter of vital importance to the company that it reach gas and get gas, and when we further consider that the Oklahoma Natural Gas Company has a corps of men engaged in watching the fields, observing and testing the quantity of gas found therein, and also in determining the cost of extensions, it would seem that the company's self interest, its necessity for obtaining gas if it is to survive and preserve its investment, would induce the conclusion that the matter of making extensions might safely be left to it. In any event the Commission could not require it to make an unprofitable extension; and so long as it continues in business, its own self interest will impel it to make profitable ones."

The Commission will adhere to the law as it finds it to be and not as it would otherwise have it to be, and hence without adopting or rejecting the position taken by counsel in the above argument, puts the same before the public for the proper consideration of all concerned to the end that all may be advised and that the public may determine whether in the future their attitude will be coercive or co-operative. The Commission might have foreclosed this point in this case, but such action is not necessary to proper determination thereof, and therefore awaits further light on the subject.

The rule adopted in this case must necessarily fail when the day does come when there is an actual shortage of gas available, though ample transportation facilities exist, since after partial failure of the supply there will be as the same continues to decrease, some gas for a partial, as distinguished from a full service. Therefore the Commission suggests the inadvisability of depending upon the plan herein adopted for future adjustments of differences and advises the gas companies before the coming of another winter to submit some plan whereby service to a portion of its patrons may be curtailed so that there may be satisfactory service to the whole. For example some plan might be worked out whereby gas for use under boilers used to heat large buildings by steam or hot water might be withdrawn and coal resorted to in periods of stress. Examples need not be multiplied as details along this line may be worked out by a conference between experts of the companies and the Commission.

Attention might be directed to the fact that the reports of gas companies generally show scant earnings in the summer months, and to the possible effect on future rate adjustments, of serious deflections in winter earnings on account of sub-normal service

during a limited part of the time, while during most of the season service is reasonably satisfactory. It is better that a part of the public resort to the use of coal or other fuel occasionally than for all the public to suffer a general raise of rates that would inevitably follow a continuous policy of refunds on the basis herein used, in which the service as distinguished from the commodity involved is alone considered in the adjustment of disputed charges.

Gas, on account of the inherent nature of the same, does not circulate under low temperature with the same ease and rapidity as it does otherwise, and, therefore, in periods of extreme cold, service may become unsatisfactory even when volume and pressure of gas are both sufficient to insure good service under normal conditions.

All users of gas might well exercise the precaution of preparing for use of other fuel as an adjunct of gas service in times of severe cold, and as a substitute therefor, when they are unwilling to abide by the generally accepted manner of means of measuring the same. The foregoing seems to cover the facts and matters of record pertinent to the material issues.

The Commission having given careful consideration to all the testimony in the record and to all the facts above referred to finds to be reasonable as an adjustment between these defendants and their patrons, and orders as a basis for settlement the following:

District No. 1. No Discount.

The following territory:

All lying north of alley between 27th and 28th streets.

All lying west of Kentucky north of alley between 10th and 11th streets.

All lying south of Canadian River west of Blackwelder north of Avenue "C."

All bounded by alley between 13th and 14th streets, alley between 22nd and 23rd and between Santa Fe track and Walker St.

District No. 2. Discount of December 8 Per Cent; Discount for January 10 Per Cent.

The following territory:

All lying south of alley between 27th and 28th streets; and north of alley between 23rd and 24th streets, between Kentucky Avenue and Santa Fe Track.

District No. 3. Discount of December 12 Per cent; Discount for January 14 Per Cent.

The following territory:

All lying between alley between 23rd and 24th streets and alley between 10th and 11th streets between Kentucky Avenue and Walker Street.

District No. 4. Discount for December 10 Per Cent; Discount for January 12 Per Cent.

The following territory:

239 All lying within boundary running along Pennsylvania Avenue from Rock Island Track to alley between 10th and 11th streets; east along the said alley to center of Walker Street, north along center of Walker Street to alley between 13th and 14th streets, east along said alley to Santa Fe track, north to 10th street, east along center of 10th street to Phillips street, south along center of Phillips street to 13th street, east along center of 13th to center of Kelley street, south along center of Kelley street to Canadian River, west and north along the river to Pennsylvania Avenue; north along and including both sides of Pennsylvania Avenue to Rock Island track, (not including city water works).

District No. 5. Discount for December 17 Per Cent; Discount for January 20 Per Cent.

The following territory:

All lying east or north of line starting at Rock Island track at Kelley, running north along center of Kelley to 13th; west along 13th to Phillips, north along Phillips to city limit.

District No. 6. Discount for December 18 Per Cent; Discount for January 25 Per Cent.

The following territory:

All lying south of Canadian River east of Santa Fe track.

District No. 7. Discount for December 15 Per Cent; Discount for January 20 Per Cent.

The following territory:

All lying south of Canadian river west of Santa Fe track, not included in District No. 1.

240 Discounts allowed herein shall be in addition to the regular discount allowed for prompt payment of bills, but shall apply to bills for domestic consumption of gas only, and domestic consumption for the purposes of this order shall be construed to mean only gas used for physical comfort or for cooking, in residences only.

Regular discounts on bills payable in February for gas used in January shall be allowed if settlement is made before the expiration of the month of February. Discounts on bills payable in January for gas *under* in December shall be allowed as a credit against net amount of bills payable in February, after deducting regular discount and special January discount allowed by this order. When bills payable in February have been paid, discount allowed by this order shall be credited on bills payable in March.

The defendants, Oklahoma Gas & Electric Company, having agreed to defer enforcement of collection of January bills until February, and to allow regular discount on such bills up to that date, the Commission will deny the application in Cause No. 3192 (Donnell et al.) for a restraining order to accomplish this purpose, except to further defer said date for enforcement of collection and disallowance of regular discount to March 1.

The prayer in Cause No. 3197 (Selby et al.) that this Commission take charge of and operate, in all respects, the property and business of the Oklahoma Gas & Electric Company will be denied. The prayer in Cause No. 3197 (Selby et al.) that fines for contempt of Order No. 1028 be imposed will be denied.

Done at Oklahoma City, Oklahoma, in the regular order of business, on this the 23rd day of February, 1918.

CORPORATION COMMISSION OF
OKLAHOMA.

(Signed)

W. D. HUMPHREY,

Commissioner.

Attest:

(Signed) J. H. HYDE,

Secretary.

24 Thereafter, on the 25th day of February, 1918, the Commission filed its Order No. 1380 modifying its previous Order No. 1379, which is in words and figures following, to-wit:

148 OKLA. NAT. GAS CO. VS. THE STATE OF OKLA. ET AL.

242 Corporation Commission of Oklahoma.

Order No. 1380.

Causes Nos. 3188, 3192, 3197.

Cause No. 3188.

CHAS. H. RUTH et al., Complainants,

VS.

OKLAHOMA GAS & ELECTRIC COMPANY and THE OKLAHOMA NATURAL GAS COMPANY, Defendants.

Cause No. 3192.

T. F. DONNELL et al., Complainants,

VS.

OKLAHOMA GAS & ELECTRIC COMPANY, Defendants.

Cause No. 3197.

CHAS. B. SELBY, County Attorney, et al., Complainants,

VS.

OKLAHOMA GAS & ELECTRIC COMPANY and THE OKLAHOMA NATURAL GAS COMPANY, Defendants.

Modifying Order No. 1379.

By the COMMISSION:

The defendant, the Oklahoma Gas & Electric Company, having represented to the Commission that order No. 1379, involves certain inequities as between consumers of said Company discounts prescribed in said order applying in certain instances to consumers on certain supply pipe lines and being denied to other consumers served by the same lines, whereas the service furnished to all such consumers would necessarily be identical and that such conditions can be corrected and such inequities be eliminated by a slight modification of the boundaries in certain of the districts defined and described in said order No. 1379; and

243 The Commission having investigated such representations and having found same to be correct, it is therefore ordered that the boundaries of the discount districts described in Order No. 1379 be amended and changed to read as follows:

District No. 1. No discount.

The following territory:

All lying north of 27th Street.

All lying west of Kentucky north of alley between 10th and 11th streets.

All lying south of the Canadian River west of Blackwelder north of Avenue "C."

All bounded by alley between 13th and 14th streets; alley between 22nd and 23rd and between Santa Fe track and Dewey street.

District No. 2. Discount for December 8 per cent; discount for January 10 per cent.

The following territory:

All lying south of 27th street and north of line beginning at Santa Fe Railway and alley between 22nd and 23rd streets, thence west in said alley to Dewey street, thence south on Dewey to alley between 21st and 22nd streets, thence west in said alley to Classen Boulevard, thence northwesterly along Classen Boulevard to alley between 22nd and 23rd streets, thence west in said alley to McKinley Avenue, thence north on McKinley Avenue to alley between

24 23rd and 24th streets, thence west in said alley to Kentucky Avenue, and bounded on the west by Kentucky Avenue and on the east by Santa Fe track.

District No. 3. Discount for December 12 per cent; discount for January 14 per cent.

The following territory:

All lying south of a line beginning at the intersection of Kentucky Avenue and alley between 23rd and 24th streets, thence east in said alley to McKinley Avenue, thence south on McKinley Avenue to alley between 22nd and 23rd streets, thence east in said alley to Classen Boulevard, thence southeasterly on Classen Boulevard to alley between 21st and 22nd streets, thence east in said alley to Dewey street, and north of alley between 10th and Park Place and bounded on the east by Dewey and on the west by Kentucky Avenue.

District No. 4. Discount for December 10 per cent; discount for January 12 per cent.

The following territory:

25 All lying within boundary running along Pennsylvania Avenue from Rock Island track to alley between 10th street and Park Place; east along the said alley to center of Dewey street; north along center of Dewey street to alley between 13th and 14th streets, east along said alley to Santa Fe track; north to 16th street; east along center of 16th street to Phillips street; south along center

of Phillips street to 13th street; east along center of 13th street to center of Kelley street; south along center of Kelley street to between 10th and East Park Place, thence east to Stonewall, south on Stonewall to Canadian River; west and north following along and including both sides of Pennsylvania Avenue to Island track.

District No. 5. Discount for December 17 per cent; discount for January 20 per cent.

All lying east or north of line starting at North Canadian River running north along Stonewall to alley between 10th street and East Park Place, thence west in said alley to Kelley Avenue, thence north on Kelley Avenue to 13th street, thence west on 13th street to Phillips Avenue, thence north on Phillips Avenue to City limit.

246 District No. 6. Discount for December 18 per cent; discount for January 25 per cent.

The following territory:

All lying south of Canadian River, east of Santa Fe track.

District No. 7. Discount for December 15 per cent; discount for January 20 per cent.

The following territory:

All south of Canadian River west of Santa Fe track, not included in District No. 1.

Said defendant, the Oklahoma Gas & Electric Company, having further represented to the Commission that the burden of bookkeeping and analysis of accounts involved in application of the adjustment prescribed in Order No. 1379 is such that the adjustment therein prescribed is physically impossible within the time prescribed in said order to-wit, before March 1st; and that a further time of at least three weeks is necessary for the alteration of each customer's account in accordance with discount prescribed in said order, and the Commission having considered such representations and found same to be correct, it is further ordered that said defendant, the Oklahoma Gas & Electric Company, shall proceed to make a complete audit and verification of each customer's account as soon as the same can be done, and that the date for allowance of regular discounts for prompt payment of bills as applied to bills involved in said Order No. 1379, shall be deferred until March 20, 1918, instead of March 1st., as in said order.

It being represented to the Commission by said defendant, the Oklahoma Gas & Electric Company, that some misunderstanding has appeared to exist as to whether special discounts prescribed in Order No. 1379, should be applied to gross amount of bills involved or to net amount after deduction of regular discount for prompt payment, said order is construed to mean that discounts allowed

therein shall apply to the net amount due after deducting the regular discount allowed for prompt payment of bills.

Such special discount shall apply to bills for domestic consumption of gas only, and domestic consumption for the purpose of this order shall be construed to mean only gas used for physical comfort or for cooking in residences only.

Done at Oklahoma City, Oklahoma, in the regular order of business, on this the 25th day of February, 1918.

CORPORATION COMMISSION OF
OKLAHOMA.

(Signed)

CAMPBELL RUSSELL,

Commissioner.

(Signed)

W. D. HUMPHREY,

Commissioner.

Attest:

J. H. HYDE,

Secretary.

28 Thereafter, on the 5th day of March, 1918, the Oklahoma Natural Gas Company, one of the defendants in said cause filed its application for an appeal, and its request to the Chairman of the Commission to certify said causes to the Supreme Court, which in words and figures following, to-wit:

29 Before the Corporation Commission of Oklahoma.

Cause No. 3188.

CHAS. H. RUTH et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY, OKLAHOMA NATURAL GAS COMPANY, Defendants.

Cause No. 3192.

T. F. DONNELL et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY, Defendant.

Cause No. 3197.

CHARLES B. SELBY, County Attorney, Complainant,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL GAS COMPANY, Defendants.

Order No. 1379.

Comes the Oklahoma Natural Gas Company, one of the defendants affected by Order No. 1379, issued in the foregoing causes, and

respectfully shows to the Commission that it desires to appeal to the Supreme Court of Oklahoma from the said order No. 1373 issued in the above entitled causes and from the findings and judgment of the Commission at the close of said order.

It therefore respectfully requests that the Chairman of this Commission shall certify to the Supreme Court that the facts upon which the said order, finding and judgment were based and which may be essential for the proper decision of the appeal together with all of the evidence introduced or considered by the Commission, and also the pleadings in said causes and a copy of the findings of fact, opinion and order of the Commission, with a written statement of the reasons upon which the order appealed from is based.

This defendant further respectfully represents to the Commission that in order to protect its rights in the event the order of the Commission is reversed in the Supreme Court, it is necessary for said order to be superseded pending the appeal, and it therefore respectfully requests the Commission to supersede said order and permit the collection of the regular charges affected by said order pending said appeal, upon such terms as to bond or otherwise as to the Commission may seem just and right.

(Signed) AMES, CHAMBERS, LOWE & RICHARDSON,

Attorneys for Oklahoma Natural Gas Company.

Thereafter, on the same date, the 5th day of March, 1915, upon application of the Oklahoma Natural Gas Company, the Commission made a supersedeas order, which is in words and figures, to wit:

2 Before the Corporation Commission of the State of Oklahoma.

Cause No. 3188,

CHARLES H. RUTH et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL
GAS COMPANY, Defendants.

Cause No. 3192,

T. F. DONNELL et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY, Defendant.

Cause No. 3197,

CHARLES B. SELBY, County Attorney, Complainant,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL
GAS COMPANY, Defendants.

Order No. 1379.

Supersedeas Order.

Upon application of the Oklahoma Natural Gas Company for an
order of supersedeas in connection with its appeal to the Supreme
Court, it is ordered that upon the giving of a bond in the sum of
\$100,000.00 by the Oklahoma Natural Gas Company that said order
be superseded.

The condition of said bond shall be that in the event the Supreme
Court of the State of Oklahoma affirms said order that the Oklahoma
Natural Gas Company shall refund to all consumers affected by
said order the amount to which they may be severally entitled ac-
cording to the terms of said order.

23 Thereafter, on the 6th day of March, 1918, the Oklahoma
Natural Gas Company filed its said supersedeas bond, which
was duly approved by the Commission, said bond being in words
and figures following to wit:

Whereas, pending said appeal said order has been superseded by the Corporation Commission;

Now therefore, if the said Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company, in the event said order No. 1379 as modified by order No. 1380, filed in said cause —, then this obligation to be void, otherwise to remain in full force and effect.

It being the intent and meaning of this obligation that said refund shall be made to all consumers affected by said orders in full, irrespective of whether the collections made shall be by or for the benefit of either the Oklahoma Gas & Electric Company or the Oklahoma Natural Gas Company.

OKLAHOMA NATURAL GAS COMPANY,

Principal,

By AMES, CHAMBERS, LOWE & RICHARD-
SON, *Its Attorneys,*

UNITED STATES FIDELITY & GUARANTY
COMPANY, *Surety,*

By ED M. SEMANS,

*Its Duly Authorized Agent and
Attorney in Fact. [SEAL.]*

256 Endorsed: Before the Corporation Commission of Oklahoma. No. 3188. Chas. H. Ruth et al., Complainants, vs. Oklahoma Gas & Electric Co. et al., Defendants. No. 3192. T. F. Donnell et al., Complainants, vs. Oklahoma Gas & Electric Company, Defendants. No. 3197. Charles B. Selby et al., Complainants, vs. Oklahoma Gas & Electric Co. et al., Defendants. Undertaking for Appeal.

257 The undersigned attorneys for Complainants in the above entitled causes acknowledge service of a copy of the foregoing record this 19 day of March, 1918.

CHAS. B. SELBY,

CHAS. H. RUTH,

H. F. TRIPP,

Attorneys for Complainants.

S. P. FREELING,

Attorney General,

By HUNTER JOHNSON,

Ass't Att'y General.

258 Case made endorsed: No. 9854. Filed in Supreme Court of Oklahoma Apr. 3, 1918. William M. Franklin, Clerk.

254 Before the Corporation Commission of Oklahoma.

No. 3188.

CHARLES H. RUTH et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and OKLAHOMA NATURAL
GAS COMPANY, Defendants.

No. 3192.

T. F. DONNELL et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY, Defendant.

No. 3197.

CHARLES B. SELBY, County Attorney, et al., Complainants,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY and THE OKLAHOMA
NATURAL GAS COMPANY, Defendants.

Undertaking on Appeal.

Know all men by these presents:

That the Oklahoma Natural Gas Company, a corporation, organized under the laws of the State of Oklahoma, obligor, and the United States Fidelity & Guaranty Company, a corporation, organized under the laws of Maryland, and duly qualified to transact business in the State of Oklahoma, surety, are held and firmly bound unto the State of Oklahoma in the sum of Thirty Thousand (\$30,000.00) Dollars, for the payment of which well and truly to be made, we and each of us do hereby jointly and severally bind ourselves, our successors and assigns.

Dated this 6th day of March, 1918.

255 The condition of the foregoing obligation is such that whereas, on the 23rd day of February, 1918, the Corporation Commission of the State of Oklahoma, in the aforesaid cause entered its order No. 1379 requiring the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company, defendants, to make certain refunds specified in said order to the consumers of gas in the City of Oklahoma City, during the month of December, 1917, and January, 1918; and

Whereas, the Oklahoma Natural Gas Company, principal obligor, has appealed to the Supreme Court of the State of Oklahoma from said order; and

259 Filed in Supreme Court of Oklahoma Feb. 11, 1920. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, Appellant,

VS.

THE STATE OF OKLAHOMA et al., Appellees.

Motion to Correct and Supplement Record.

Now comes the appellant, Oklahoma Natural Gas Company and shows to the court that it is filing a petition for rehearing herein, and that the proper and correct determination of this cause depends in part upon matters before the Corporation Commission, and portions of the record made before said Corporation Commission which said Commission failed to certify to this Court, or to make a part of the record herein, and that said omitted portions of said record should by this court be required to be certified up and made a part of said record, for the consideration of this court in the determination of said petition for rehearing.

The appellant shows to the court that the record herein does not show the service of notice or the nature of the notice given to the appellant or to the Oklahoma Gas & Electric Company of the institution and pendency of this action, nor does the record herein show what was the schedule of rates in force in Oklahoma City during the period of said alleged shortage of gas or said alleged low pressure, and that both of said matters are necessary for the proper determination of the questions involved in this case.

Wherefore, the premises considered, appellant prays that this court will order and direct the said Commission to certify to this
260 Court the above and foregoing matters, and that the same be made a part of the record herein.

AMES, CHAMBERS, LOWE &
RICHARDSON,

Attorneys for Oklahoma Natural Gas Company.

We, the undersigned, hereby acknowledge service upon us of a copy of the above and foregoing motion, on this the 5th day of February, 1920, and we hereby consent that the said Corporation Commission may certify to this court the portions of the record in this cause specified in said motion, and that the same may be made a part of said record.

T. F. DONNELL

We, the undersigned, hereby acknowledge service upon us of a copy of the above and foregoing motion, on this the 6th day of Feb

February, 1920, and we hereby consent that the said Corporation Commission may certify to this court the portions of the record in this cause specified in said motion, and that the same may be made a part of said record.

SELBY & CALLIHAN.

We, the undersigned, hereby acknowledge service upon us of a copy of the above and foregoing motion, on this the 11th day of February, 1920, and we hereby consent that the said Corporation Commission may certify to this court the portions of the record in this cause specified in said motion, and that the same may be made a part of said record.

CHARLES H. RUTH.

We, the undersigned, hereby acknowledge service upon us of a copy of the above and foregoing motion, on this 11th day of February, 1920, and we hereby consent that the said Corporation Commission may certify to this court the portions of the record in this cause specified in said motion, and that the same may be made a part of said record.

S. P. FREELING,

Att'y Gen'l.

Filed in Supreme Court of Oklahoma Feb. 11, 1920. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, Appellant,

vs.

THE STATE OF OKLAHOMA et al., Appellees.

Order.

Now on this 11th day of February, 1920, upon application of the appellant, the Oklahoma Natural Gas Company, it is by the court ordered that the Corporation Commission of Oklahoma be and it is hereby required to certify to this court the process or notice of the institution and pendency of this action served upon the appellant, the Oklahoma Natural Gas Company, and upon the Oklahoma Gas & Electric Company, and showing the nature and character of said service; and also that said Corporation Commission be and is hereby required to certify to this Court the schedule of rates for gas in effect in Oklahoma City during the months of December, 1917, and January, 1918; and that said matters, when so certified by said Corporation Commission shall become and be a part of the record in this case in this court.

ROBT. M. RAINEY,

V. Chief Justice.

263 Filed in Supreme Court of Oklahoma Feb. 11, 1920, William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, Appellant,

VS.

THE STATE OF OKLAHOMA et al., Appellees.

Supplement to Record.

In compliance with the order of the Supreme Court of Oklahoma made in the above entitled and numbered cause on the 11th day of February, 1920, requiring the Corporation Commission of the State of Oklahoma to certify to the court the process or notice of the institution and pendency before said Commission of the action above entitled and numbered served upon the appellant, the Oklahoma Natural Gas Company, and upon the Oklahoma Gas & Electric Company, and showing the nature and character of said service, and also requiring the said Corporation Commission to certify to the court the schedule of rates for gas in effect in Oklahoma City for the months of December, 1917, and January, 1918, and ordering that said matters when so certified by said Corporation Commission should become and be a part of the record in said cause, the said Corporation Commission under the hand of its Chairman and seal of its secretary does hereby certify as follows:

The service of process upon the appellant and the Oklahoma Gas & Electric Company in each of the three complaints filed against said companies which were consolidated, and the appeal in which is numbered 9854 in this Court, consisted of letters written by said

264 Commission to the said gas companies above named, or to their attorneys, enclosing a copy of the complaint in each case, and stating that the same had been docketed and set for hearing in the office of the Commission in the State Capital at Oklahoma City, Oklahoma, on a certain day, true and correct copies of which said letters are as follows, to-wit:

265

Dec. 11th, 1917.

Mr. Glenn T. Braden,
Oklahoma Natural Gas Co.,
Tulsa, Oklahoma.

DEAR SIR:

In re cause #3188: Complaint of Chas. H. Ruth and H. F. Tripp, et al., vs. the Oklahoma Gas & Elec. Co., and the Oklahoma Natural Gas Co.

Herewith enclosed find copy of the above complaint, which has been docketed, and set for hearing at the Office of the Commission in the State Capitol at Oklahoma City, December 22nd, at 10:00 A. M.

Yours very truly,

CAMPBELL RUSSELL,

Act. Chairman.

J. H. H./G.

Dec. 11th, 1917.

Mr. Paul K. Reiss, Att'y.,

Oklahoma Gas & Electric Co.,

Oklahoma City, Oklahoma.

DEAR SIR:

In re cause #3188: Complaint of Chas. H. Ruth, & H. F. Tripp, et al., vs. the Okla. Gas & Elec. Co., and the Oklahoma Natural Gas Company.

The above complaint has been docketed, and set for hearing at the Office of the Commission in the State Capitol at Oklahoma City, December 22nd, at 10:00 A. M.

Copy of complaint is enclosed herein.

Yours very truly,

CAMPBELL RUSSELL,

Act. Chairman.

J. H. H./G.

Dec. 12th, 1917.

Mr. Glenn T. Braden,

Oklahoma Natural Gas Co.,

Oklahoma City, Oklahoma.

DEAR SIR:

In re Cause #3192: Complaint of T. F. Donnell, et al. vs. Oklahoma Gas and Electric Company.

Herewith enclosed find copy of the above complaint, which has been docketed, and set for hearing at the office of the Commission in the State Capitol at Oklahoma City, December 22nd, at 10:00 A. M.

Yours very truly,

CAMPBELL RUSSELL,

Act. Chairman.

J. H. H./G.

268

Dec. 12th, 1917.

Mr. Paul K. Reiss, Att'y,
Oklahoma Gas & Electric Co.,
Oklahoma City, Oklahoma.

DEAR SIR:

In re Cause #3192: Complaint of T. F. Donnell, et al., vs. Oklahoma Gas and Electric Company.

Herewith enclosed find copy of the above complaint, which has been docketed, and set for hearing at the office of the Commission in the State Capitol at Oklahoma City, December 22nd, at 10:00 A. M.

Yours very truly,

CAMPBELL RUSSELL,
Act. Chairman.

J. H. H. G.

269

Dec. 13th, 1917.

Messrs. Ames, Chambers, Lowe, & Richardson, Attorneys,
512 American Bank Building,
Oklahoma City, Oklahoma.

GENTLEMEN:

In re Cause #3188: Complaint of Chas. H. Ruth, and H. F. Tripp, et al., vs. Okla. Gas & Elec. Co., and the Oklahoma Natural Gas Co.

In re cause #3192: Complaint of T. F. Donnell, et al., vs. Oklahoma Gas & Electric Company.

Complying with your phone request of even date, herewith enclosed find copies of the above complaints.

Yours very truly,

W. D. HUMPHREY,
Act. Chairman.

J. H. H. G.

270

Dec. 14th, 1917.

Messrs. Ames, Chambers, Lowe & Richardson, Attorneys,
American Bank Building,
Oklahoma City, Oklahoma.

GENTLEMEN:

In re Cause #3197: Complaint of Chas. B. Selby, et al., vs. Okla. Gas & Elec. Co., and the Okla. Natural Gas Company.

Herewith enclosed find copy of the above complaint, which has been docketed, and set for hearing at the office of the Commission in the State Capitol at Oklahoma City, December 22nd, at 10:00 A. M.

Yours very truly,

CAMPBELL RUSSELL,
Act. Chairman.

J. H. H. G.

271

Dec. 17th, 1917.

Messrs. Ames, Chambers, Lowe & Richardson, Attorneys,
American National Bank Building,
Oklahoma City, Oklahoma.

GENTLEMEN:

In re Cause #3188: Complaint of Chas. H. Ruth et al. vs. Okla.
Gas & Elec. Co., & Oklahoma Natural Gas Co.

In Re Cause #3192: Complaint of T. F. Donnell et al. vs. Okla.
Gas & Electric Company.

In re Cause #3197: Complaint of Chas. B. Selby et al. vs. Okla.
Gas & Elec. Co., and the Oklahoma Natural Gas Co.

Hearing of the above complaints has been continued to December
27th, at 10:00 A. M.

Yours very truly,

CAMPBELL RUSSELL,
Act. Chairman.

J. H. H./G.

272

Dec. 14th, 1917.

Mr. W. R. Molinard,
Oklahoma Gas & Elec. Co.,
Oklahoma City, Oklahoma.

DEAR SIR:

In re Cause #3197: Complaint of Chas. B. Selby et al. vs. Okla-
homa Gas & Elec. Co., and the Oklahoma Natural Gas Company.

Herewith enclosed find copy of the above complaint, which has
been docketed, and set for hearing at the office of the Commission
in the State Capitol at Oklahoma City, December 22nd, at 10:00
A. M.

Yours very truly,

CAMPBELL RUSSELL,
Act. Chairman.

J. H. H./G.

273

Dec. 14th, 1917.

Messrs. Ames, Chambers, Lowe & Richardson, Attorneys,
American Bank Building,
Oklahoma City, Oklahoma.

GENTLEMEN:

In re cause #3197: Complaint of Chas. B. Selby et al. vs. Okla-
homa Gas & Elec. Co., and the Okla. Natural Gas Company.

Herewith enclosed find copy of the above complaint, which has
been docketed, and set for hearing at the office of the Commission

in the State Capitol at Oklahoma City, December 22nd, at 10.00 A. M.

Yours very truly,

CAMPBELL RUSSELL,
Act. Chairman.

J. H. H./G.

274

Dec. 17, 1917.

Messrs. Ames, Chambers, Lowe & Richardson, Attorneys,
American National Bank Building,
Oklahoma City, Oklahoma.

GENTLEMEN:

In re cause #3188: Complaint of Chas. H. Ruth et al. vs. Okla. Gas & Elec. Co., & Oklahoma Natural Gas Co.

In re Cause #3192: Complaint of T. F. Donnell et al. vs. Okla. Gas & Electric Company.

In re Cause #3197: Complaint of Chas. B. Selby et al. vs. Okla. Gas & Elec. Co., and the Oklahoma Natural Gas Co.

Hearing of the above complaints has been continued to December 27th, at 10:00 A. M.

CAMPBELL RUSSELL,
Act. Chairman.

J. H. H./G.

275

Dec. 17th, 1917.

Mr. W. R. Molinard, Genl. Manager,
Oklahoma Gas & Electric Co.,
Oklahoma City, Okla.

DEAR SIR:

In re Cause #3188: Complaint of Chas. H. Ruth et al. vs. Okla. Gas & Elec. Co., & Oklahoma Natural Gas Company.

In re Cause #3192: Complaint of T. F. Donnell et al. vs. Okla. Gas & Elec. Co.

In re Cause #3197: Complaint of Chas. B. Selby et al. vs. Okla. Gas & Elec. Co., & Oklahoma Natural Gas Company.

Hearing of the above complaints has been continued to December 27th, at 10:00 A. M.

Yours very truly,

CAMPBELL RUSSELL,
Act. Chairman.

J. H. H./G.

Dec. 17th, 1917.

Mr. Glenn T. Braden,
Oklahoma Natural Gas Co.,
Oklahoma City, Oklahoma.

DEAR SIR:

In re Cause #3188: Complaint of Chas. H. Ruth et al. vs. Okla. Gas & Elec. Co., & Oklahoma Natural Gas Co.

In re Cause #3192: Complaint of T. F. Donnell et al. vs. Okla. Gas & Elec. Co.

In re Cause #3197: Complaint of Chas. B. Selby et al. vs. Okla. Gas & Elec. Co., & Oklahoma Natural Gas Company.

Hearing of the above complaints has been continued to December 17th. at 10:00 A. M.

Yours very truly,

CAMPBELL RUSSELL,
Act. Chairman.

J. H. H./G.

The schedule of rates for gas in effect in Oklahoma City during the months of December, 1917, and January, 1918, are the schedules on file with said Commission, a true and correct copy of which is as follows, to-wit:

Copy.

H. M. Byllesby & Company.

Oklahoma Gas and Electric Company.

Statement Relative to Natural Gas.

The Oklahoma Gas & Electric Company distributes gas to consumers as the agent of the Oklahoma Natural Gas Company.

The Oklahoma Gas & Electric Co. does not own the supply of natural gas, nor the pipe line conveying gas to Oklahoma City from the gas fields.

Natural gas is supplied all customers under written contract between the customer and the Oklahoma Natural Gas Company, (not the Oklahoma Gas & Electric Co.), the latter company signing such contracts as the agent of the former.

The form of contract referred to above sets forth clearly all of the rules and regulations under which natural gas is supplied. Customers are urgently requested to familiarize themselves with the terms of their contracts, a copy of which will be furnished upon application.

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H. M. Byllesby & Company.

Oklahoma Gas and Electric Company.

Natural Gas Rates.

25¢ net or 30¢ gross per cu. ft. for the first 200,000 cu. ft. used per month.

16¢ net or 21¢ gross per 1000 cu. ft. for the next 300,000 cu. ft. used per month.

11¢ net or 13½¢ gross per 1000 cu. ft. for the next 1,000,000 cu. ft. used per month.

10¢ net or 12½¢ gross per 1000 cu. ft. for all used in excess of 1,500,000 cu. ft. per month.

Discount.

The difference between the gross and the net constitutes a discount for prompt payment which will be allowed if payment is made within ten days from date of rendering bill.

Minimum Monthly Bill.

\$1.00 net per month or if used for gas engine service \$1.00 per month for the first horsepower of gas engine capacity served and 50¢ per horsepower, or fraction thereof, of additional gas engine capacity.

280 And said Corporation Commission of Oklahoma does hereby certify that the above and foregoing truly and correctly show and set forth the nature and character of the service had upon said Oklahoma Natural Gas Company and said Oklahoma Gas & Electric Company upon each of said complaints, and also truly and correctly set forth the schedule of rates on file with said Corporation Commission, and which were established and existing rates for natural gas in effect in Oklahoma City during the said months of December, 1917, and January, 1918.

Witness my hand as the chairman of said Corporation Commission, and the seal of said Commission on this the 11th day of February, 1920.

ART L. WALKER,

*Chairman Corporation Commission
of the State of Oklahoma.*

Attest:

J. E. SCOTT,

Secretary. [SEAL.]

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And thereafter, to-wit, on the 13th day of August, 1918, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

me Court, June Term, 1918, August 13th, 1918, Twentieth Judicial Day.

9854.

OKLAHOMA NATURAL GAS Co., Appellant,

vs.

STATE OF OKLAHOMA et al., Appellees.

And now on this day the above cause is stricken from the October, Assignment.

And thereafter, to-wit, on the 21st day of January 1919, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

me Court, December Term, 1918, January 21st, 1919, Seventh Judicial Day.

9854.

OKLAHOMA NATURAL GAS Co., Appellant,

vs.

STATE OF OKLAHOMA et al., Appellees.

And now on this day the above cause is continued for the term.

And thereafter, to-wit, on the 9th day of December 1919, in the Supreme Court of Oklahoma, the following proceedings were had, in said cause:

me Court, December Term, 1919, First Judicial Day, December 9th, 1919.

9854.

OKLAHOMA NATURAL GAS Co., Appellant,

vs.

STATE OF OKLAHOMA et al., Appellees.

And now on this day the above cause is submitted on the record and briefs filed therein.

And thereafter, to-wit, on the 20th day of January, 1920, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, December Term, 1919, January 20th, 1920, Eleventh
Judicial Day.

9854.

OKLAHOMA NATURAL GAS CO., Appellant.

VS.

STATE OF OKLAHOMA et al., Appellees.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the order of the Corporation Commission in the above cause should be affirmed.

It is therefore ordered and adjudged by the court that the order of the Corporation Commission in the above cause, be, and the same is hereby affirmed.

Opinion by Owen, C. J.

Kane, Rainey, Johnson, and McNeill, JJ., concur.

285 [Stamped:] Filed Supreme Court of Oklahoma, Jan. 2
1920. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

#9854.

OKLAHOMA NATURAL GAS COMPANY, Appellant,

V.

THE STATE OF OKLAHOMA et al., Appellees.

Syllabus.

1.

Where a gas company is required by order of the Corporation Commission to furnish an adequate supply of gas for domestic consumption and is allowed to charge the public the maximum rate which is based upon the adequacy of the service rendered as well as upon the quantity of gas furnished and it is subsequently shown that this degree of efficiency is not sustained by the company during certain winter months the Corporation Commission has power to make an order requiring the company to discount its bills rendered for such months a certain per cent, for the purpose of apportioning the maximum rate allowed according to the efficiency of the service rendered, as well as to the quantity of gas furnished where it is practicable to do so; and where it appears that the

discount ordered bears a fair relation to the falling off in service, such order will not be disturbed on appeal.

2.

By chapter 93, Session Laws 1913, jurisdiction is conferred upon the Corporation Commission over public utilities, with the power to fix and establish rates and prescribe rules, requirements and regulations, affecting their service and operation and the management and conduct of their business, and under the powers thus conferred, the commission is vested with authority to make all valid and lawful orders prescribing rates, which the State, in the exercise of its sovereign capacity, could prescribe or make.

3.

Orders of the Corporation Commission prescribing the rates to be charged by a public utility, and the service to be furnished by such utility, are as much a law of the State as if enacted by the Legislature, and such public utility in furnishing natural gas is as much subject to the provisions of such orders as if they had been made an integral part of the contract between the consumer and the public utility.

4.

In the exercise of its peculiar jurisdiction as a legislative body, in reviewing the order of the Corporation Commission adjusting rates in accordance with the schedule of natural gas rates prescribed for adequate service, the duty of this court is marked out in the Constitution, and that is, to determine whether or not such order appealed from was reasonable, just, and correct, supported by the *prima facie* presumption in favor of the action of the Commission, that it is reasonable and just. Unless the rate established by the commission is clearly oppressive on the one hand or confiscatory on the other, no judicial question is presented.

5.

While natural gas as it comes from the wells and is put into interstate pipe lines may be a commodity of interstate commerce, the furnishing of natural gas to domestic consumers under the laws of this State and under the rules and regulations of the Corporation Commission is the rendering of a service, and the failure to transport gas with sufficient pressure to render service, notwithstanding meter readings, which the commission found indicate only volume, is a failure to render service. Volume, it appears, is only one factor in indicating

service and is not a determining factor in indicating whether service was rendered or the payment which the utility should receive therefor, and failure to require payment on the basis of volume of natural gas measured at the consumer's meter is not, therefore, a failure to receive payment for service, and is not a taking of the property of the gas utility without due process of law.

Appeal from Corporation Commission.

From an order of the Corporation Commission prescribing refund for natural gas service furnished by the Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Company to domestic consumers in Oklahoma City, the Oklahoma Natural Gas Company, appealed.

Affirmed.

Ames, Chambers, Lowe & Richardson, for appellant.

S. P. Freeling, Attorney General; Charles B. Selby, Selby & Callahan, Henry M. Gray, Charles H. Ruth, H. F. Tripp, for appellees.

Opinion of the Court by Owen, C. J.

The issues arise from an order of the Corporation Commission directing the refund to domestic consumers in certain districts in Oklahoma City of from eight to twenty-five per cent of the bills rendered December 1917 and January 1918, on account of failure to furnish adequate gas service.

It is not controverted that there was inadequate service during these times, but appellant denies the right of the Corporation Commission to require the discounting of bills below the usual amount allowed for prompt payment; the contention being that natural gas is a commodity for which the utilities are entitled to payment on a quantum basis, as shown by meter readings, and the adequacy or inadequacy of service does not enter into the payment of bills.

287 The only difference pointed out by appellant between this case and that of *Nowata County Gas Company v. State, et al.* — Okl. —, 177 Pac. 618, where an order of the Corporation Commission requiring similar discounts for failure to give adequate gas service was upheld by this court, is that in the *Nowata* case the findings of fact of the Corporation Commission, on all matters material to the issues, were admitted by the gas company. It therefore remains to be determined only whether there are disputed material findings of fact herein which should be determined adversely to those made by the Corporation Commission.

The question is whether there is evidence in the record to support the Corporation Commission's order. Findings of fact made by the Commission are by section 22, art. 9, of the Constitution, prima facie, just, reasonable, and correct. *Atchison, T. & S. F. Ry. Co. v. State*, 23 Okl. 510, 101 Pac. 262; *Atchison, T. & S. F. Ry. Co. v.*

State, 23 Okl. 210, 100 Pac. 11; 21 L. R. A. (N. S.) 908; St. Louis & S. F. Ry. Co. v. Travelers' Corp. of Okla., 47 Okl. 374, 148 Pac. 166; Guthrie Gas, Light, Fuel & Imp. Co. v. Board of Edu., — Okl. —, 166 Pac. 128; City of Pawhuska v. Pawhuska O. & G. Co., — Okl. —, 166 Pac. 1058; Muskogee Gas & Elec. Co. v. State, #10635, (not yet officially reported.)

In Nowata County Gas Co. v. State, et al., supra, it was said:

"The commission found that the company did not meet the requirements of its franchise, nor comply with the orders of the commission requiring it to furnish an adequate supply of gas for domestic consumption during the months complained of, and that it does not appear from the evidence that it will be possible for it to do so in the future under similar circumstances * * *

* * * * *

"Testimony before the commission would indicate that under ordinary conditions a reasonable amount of service can be secured from gas with a four-ounce pressure or better; and the commission holds that in order to give reasonable service four ounces is the minimum pressure that a company distributing gas may furnish, that a three-ounce pressure provides only 75 per cent reasonable service, a two-ounce pressure only 50 per cent reasonable service, and a one-ounce pressure only 25 per cent reasonable service for the length of time each service is maintained. Less than one-ounce pressure will not be recognized by the commission as service at all or as of being of any value to the consumer."

"The commission further held that an equitable distribution of the losses arising from poor and inadequate service, as between the gas company and a consumer, could be arrived at by discounting the bills for service rendered each month upon the basis above indicated, i. e., that no charge shall be made for any gas furnished when the pressure is below one ounce; that between one-ounce and two-ounces pressure shall be considered 25 per cent efficient and gas furnished within this range of pressure shall be charged for at 25 per cent of the maximum schedule rate; that between two-ounces and three-ounces pressure shall be considered 50 per cent of the maximum schedule rate; that between three and four ounces-pressure shall be considered 75 per cent efficient, and gas charged for at 75 per cent of the schedule rate; that four-ounces pressure or above shall be considered 100 per cent efficient, and the gas thus furnished shall be charged for at the maximum schedule rate."

"Then, after quite extended computation based upon the evidence, the commission arrived at the conclusion stated in the order hereinbefore set out."

"As we understand the order of the commission, it proceeds upon the theory that, inasmuch as the maximum compensation of the gas company is allowed upon the basis of adequate service, where the service is not kept up to this standard the rate charged the public should be graded in proportion to the falling

off in efficiency. On the other hand, it seems to be the content of the gas company that it is entitled to pay at the maximum rate for the quantity of gas furnished, regardless of the efficiency of the service rendered the public. We think the rule announced by the Corporation Commission is entirely just and reasonable, provided a practical basis for its application can be established, and we see no insuperable barrier in the way of doing this. In the case at bar, the Corporation Commission, it seems, to us, have correctly solved the problem by the adoption of, what may be called, the efficiency table hereinbefore set out, and basing the proportion of the maximum rate the company may justly collect from the public upon the quality of the service rendered as well as upon the quantity of gas furnished. As it is conceded by counsel that this efficiency table and the computation of the commission based thereon is correct, we are not prepared to say, in view of the constitutional presumption to the contrary, that the conclusion reached by the commission in its order is unreasonable or unjust, or that it is unsupported by the evidence.

* * * * *

"The third assignment of error seems to be based upon the theory that, inasmuch as the gas company was operating under a fixed maximum rate during the months complained of, the Corporation Commission was without power to in any way effect or change the rate by the order made.

"The commission, as we have seen, proceeded upon the theory that the maximum rate allowed was based upon 100 per cent. efficiency, and that the reduction ordered was not for the purpose of changing the maximum rate for efficient service, but merely for the purpose of apportioning it according to the efficiency of the service rendered, as shown by the evidence and the efficiency scale adopted by the commission. Taking this view of the matter, we think the order is unassailable on the ground urged."

The commission in the order before us used exactly the same basis in making discounts as it did in the Nowata case, and, inasmuch as the court's decision in that case disposes of other material issues herein, it only becomes necessary to consider whether the commission's findings in this respect should be sustained, and the same, being *prima facie*, just, reasonable, and correct can be overcome or rebutted only by the facts in the record as weighed, and found by this court in reviewing the same, with the burden upon the appellant of making it clearly appear that the order made by the Commission is erroneous. *Atchison, T. & S. F. Ry. Co. v. State*, 23 Okl. 210, 100 Pac. 11. After reviewing the evidence in the record, we find no reason for rejecting the basis applied by the commission in determining adequacy of service or for disturbing the commission's findings as to what pressure constitutes either adequate or partial service.

Appellant insists that the order of the commission is beyond its jurisdiction and deprives the utilities of their property without due process of law. Jurisdiction over gas utilities was not included in

289 that conferred upon the commission by section 18, art. 9, Constitution, relating to transportation and transmission companies. *Shawnee Gas & Elec. Co. v. Corporation Commission*, 35 Okl. 454, 130 Pac. 127; *City of Pawhuska v. Pawhuska O. & G. Co.*, supra. But all the powers and duties specified in the Constitution as to transportation and transmission companies, and other in addition thereto, were conferred over gas and other public utilities by chapter 93, Session Laws 1913. *Muskogee G. & E. Co. v. State*, et al., supra.

The power of the Corporation Commission to regulate rates and practices of gas utilities under this act is supreme, subject only to limitations imposed by the Legislature. *Guthrie Gas, Light, Fuel & Improvement Co. v. Board of Edu.*, supra; *City of Pawhuska v. Pawhuska O. & G. Co.*, supra; *Muskogee G. & E. Co. v. State*, et al. supra.

The adjudging of the proportionate amount of the maximum rate which may be collected through failure of the utility to give adequate service, when the maximum rate is based upon adequate service, is a reasonable exercise of the jurisdiction of the Corporation Commission under this law.

General order No. 1028 of the Corporation Commission, effective since April 20, 1916; Annual Report, Corporation Commission, 1916, page 447; Corporation Commission Laws 1917, Ann., page 154, reads:

"Each and every corporation, association, company, individual, their trustees, lessees, or receivers, successors or assigns (more particularly described section 1, chapter 93, Sess. Laws 1913) supplying natural gas for domestic consumption, or for the conveyance of gas by pipe line, for the production, transmission, delivery or furnishing of heat or light with gas, or in any way, directly or indirectly supplying natural or artificial gas for domestic consumption, is hereby required to so construct and equip and maintain its pipe lines, mains and distributing systems as to be able at all times to furnish an adequate supply of gas for domestic consumption and is hereby ordered to furnish and supply at all times an adequate amount of the proper quality for heating, cooking and lighting, for domestic consumption."

This order of the commission is as much a law of the state as if enacted by the Legislature, and the utilities furnishing natural gas were as much subject to its provisions as if it had been made an integral part of the contract between the consumer and the utilities.

The order of the commission cannot be said to be a taking of property without due process of law. Hearing was had before a legally constituted tribunal and all the proceedings leading up to and including the hearing were regular and denied appellant none of the right constituting due process of law, and appeal has been taken to a court authorized by law to review the proceedings and findings of the commission. There is no evidence in the record to indicate that the discounts required reduce the revenues of the appellant to a point where it failed to receive an adequate return on the investment legally employed in the business

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of furnishing natural gas service, and if such should result from a continuance of the commission's policy the utilities are not precluded from making application to the commission for higher rates.

Since the order of the commission is merely an order adjusting rates in accordance with the schedule of rates prescribed for adequate service, this court is not called upon to determine the matter judicially. *Atchison, T. & S. F. Ry. Co. v. State*, 23 Okl. 510, 101 Pac. 262; *Salt Lake City v. Utah L. & T. Co.* (Utah) 173 Pac. 556. In the former case, this court, speaking by Mr. Justice Williams said:

"In the exercise of its peculiar jurisdiction as a legislative body in reviewing the action of the Corporation Commission, the duty of this court is marked out in the Constitution, and that is to determine whether or not such order appealed from was reasonable, just and correct, supported by the *prima facie* presumption in favor of the action of the commission that it is reasonable and just."

In *Salt Lake City v. Utah L. & T. Co.*, *supra*; p. 563, it is said:

"The power conferred upon the Legislature is supreme respecting the regulation and establishing of rates. We may not interfere with or review any legislative act unless some judicial question is presented for review. Unless a rate established by the commission is clearly oppressive on the one hand or confiscatory on the other, no judicial question *question* is presented. So far, therefore, as the questions are judicial the Utilities Act has conferred power upon this court, and in so far as the acts of the commission are properly administrative, or in their nature legislative, the power has been wisely and properly withheld from us. Whether there is any substantial evidence to support any findings of fact that the commission may make is a judicial question, and may be determined by this court."

In *Newark Nat. Gas & Fuel Co. v. City of Newark*, 242 U. S. 405, 61 Law ed. 393, it was held:

"The property of a gas-distributing company cannot be said to have been taken without due process of law, contrary to U. S. Const. 14th Amend., by a decree which enforced, without prejudice to the right to apply thereafter for a modification, a municipal ordinance fixing gas rates for five years, where there was no claim that the company could not operate profitably under such ordinance so long as its contract with a producing gas company, under which the latter was to furnish gas to the former upon the basis of a per centage of meter readings, which had two or three years to run when the suit was commenced, remained in force, and no evidence was offered to show the rate paid by the distributing to the producing company after the expiration of such contract."

Appellant contends that natural gas is a commodity (*West v. Kansas Nat. Gas Co.*, 221 U. S. 229, 55 L. ed. 716) and that the formula worked out by the commission for discounting bills denied the utilities pay for a portion of the commodity furnished. While, as a matter of fact, the product of natural gas as it comes from the wells and is put into interstate pipe lines may be a commodity

291 of interstate commerce, the furnishing of natural gas to domestic consumers under the laws of the State of Oklahoma

and the rules and regulations of the Corporation Commission, is the rendering of a service, and the failure to transport gas with sufficient pressure to render service, notwithstanding meter readings which the commission found indicate only volume, is a failure to render service. Volume of natural gas, it appears, is only one factor in indicating service and is not the determining factor in indicating that service was rendered or the pay which the utility should receive therefor, and failure to receive payment on the basis of volume measured at the consumers' meters is not, therefore, a failure to receive payment for service, and is not a taking of the property of the gas utility without due process of law.

For the reasons stated, the order of the Corporation Commission affirmed.

Kane, Rainey, Johnson, McNeill, J. J. concur.

92 And thereafter, on the 3rd day of February, 1920, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, December Term, 1919, February 3rd, 1920, Thirteenth Judicial Day.

9854.

OKLAHOMA NATURAL GAS CO., Appellant,

vs.

STATE OF OKLAHOMA et al., Appellees.

And now on this day it is ordered by the court that appellant be granted 30 days' additional time in which to file petition for rehearing and brief in support of same; mandate stayed pending said time.

93 And thereafter, to-wit, on the 19th day of February, 1920, the Petition for Rehearing and Argument in Support hereof, of Appellant, in said cause, was filed in the Supreme Court, which said Petition for Rehearing, consisting of a printed copy of said Petition for Rehearing, containing sixty-eight pages, numbered one to sixty-eight, inclusive, and the cover thereof, is in the following words and figures, to-wit:

94 [Stamped:] Filed in Supreme Court of Oklahoma Feb. 19, 1920. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, Appellant,

vs.

THE STATE OF OKLAHOMA et al., Appellees.

Petition for Rehearing and Argument in Support Thereof.

Ames, Chambers, Lowe & Richardson, Attorneys for Appellant.

294/1 In the Supreme Court of the State of Oklahoma.

No. 9854.

OKLAHOMA NATURAL GAS COMPANY, Appellant,

vs.

THE STATE OF OKLAHOMA et al., Appellees.

Petition for Rehearing and Argument in Support Thereof.

Now comes the appellant, Oklahoma Natural Gas Company, and prays the court to set aside its decision in this cause rendered on January 20, 1920, and to grant it a rehearing, for the following reasons to-wit:

1. In its opinion herein, in holding that this appellant had had due process of law, and that the order of the commission in requiring the rebating of bills already accrued did not deprive this appellant of its property without due process of law, the court overlooked the fact that the complaints filed before the Commission did not allege that the established and existing rates for gas were excessive, and did not ask a reduction in the rates; and that said complaints did not aver or allege that any rebates were due to any person upon their bills, and did not ask for any rebates, and that the notice of the pendency of the action served upon the gas companies by the commission did not disclose that the commission contemplated a reduction in rates or the making or ordering of rebates; and the appellant did not know that such action was contemplated by the commission until the order requiring such action was actually issued, and the appellant did not have an opportunity to defend against the order made by the commission; and said order therefore operates to deprive this appellant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

2. In holding that this appellant had had due process of law because it had had a hearing before a legally constituted tribunal and had had an appeal to the Supreme Court, this court overlooked the fact that due process of law under the Fourteenth Amendment to the Constitution of the United States does not depend solely upon whether a hearing was had before a legally constituted tribunal and whether an appeal may be taken; but the action of a legally constituted tribunal in a regular hearing, and of the appellate court on appeal, requiring a person to forego property rights without evidence, justifying the same, operates to deprive such person of his property without due process of law, and the same was done here, in that the evidence showed and the Commission found that this appellant had not been negligent in the performance of its public duty; nor did the Commission find that any person was charged for gas which he did not receive; but the Commission's order required a discount upon the bills for gas furnished during the two previous months, not because the patrons did not use and consume the amount of gas for which they were charged, but merely because the gas company could not furnish them all the gas they wanted or needed; and said order operates to deprive this appellant of its property without due process of law.

3. In so far as the Commission's general order No. 1028 is concerned, which required gas companies to construct and maintain pipes and mains sufficient to furnish an adequate supply of gas, and to furnish and supply at all times an adequate quantity of gas, there was no evidence that the transportation facilities of the gas companies were inadequate, but on the contrary the evidence 294/3 affirmatively showed that they were adequate, and that the shortage was due, not to the lack of adequate transportation facilities, but solely to the fact that gas in adequate quantities available to the gas companies did not exist; and insofar as that portion of general order No. 1028 is concerned which required all gas companies at all times to furnish an adequate supply of gas, the evidence showed that the appellant had exercised all reasonable care and diligence to furnish an adequate supply, and the Commission found that the charge of negligence against it in that respect was unfounded and unreasonable. And if said order is to be treated as placing upon the appellant the absolute duty of furnishing an adequate supply, when such supply by the exercise of reasonable diligence could not be procured by this appellant, then said order itself is void, and would operate to deprive this appellant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

4. Said order No. 1028 requiring all gas companies to furnish an adequate supply of gas had no relation whatsoever to rates, and does not suggest any relation to the schedule of rates then or thereafter in force; but said order, insofar as it was valid and constitutional, was merely a statement of a legal duty which existed at common law as to persons in a public business and was but the statement of a common law duty. No order had ever been made by the Com-

mission graduating the rates in accordance with the pressure of the gas or the quantity furnished.

5. The order of the Commission requiring the rebating or discounting of bills incurred in the past was not an order regulating rates, but was an order depriving this appellant of indebtednesses which had accrued to it under an existing established rate, and therein operates to deprive this appellant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

6. The Commission, in ordering the rebating of bills accrued in the past, was not adjusting rates, and was not performing a legislative function; but the order of the Commission operated to
294 4 deprive this appellant of property rights which had vested in it, and was therefore judicial, and could only be made in a proceeding with proper parties, upon proper pleadings, proper notice, and under evidence warranting the judgment, which facts did not exist here. If the Commission in making the order was acting legislatively, then the order would be void, for the legislature itself could not enact a law requiring a public utility to release or forego an indebtedness which had accrued to it for services rendered in the past without violating the Fourteenth Amendment to the Constitution of the United States.

7. The order of the Commission operates to deprive this appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, because all the evidence on the subject showed that the difference in the quantity and heating value of gas at four ounces pressure and in the quantity and heating value of the same mass of gas at three ounces pressure is only about four cubic feet of gas in the thousand; and the difference between gas at four ounces pressure and at two ounces pressure is only about eight cubic feet in the thousand; and the difference between gas at four ounces pressure and at one ounce pressure is only about thirteen cubic feet in the thousand; and the difference between gas at four ounces pressure and at atmospheric pressure is only about seventeen cubic feet in the thousand. Nevertheless, the order of the Commission does not require the discount in proportion to the quantity or heating value in a given mass of gas at the different pressures maintained but treats gas at four ounces pressure as normal, and requires the payment of the full price therefor, but for gas furnished at 3 ounces pressure, in which there is only four cubic feet of gas in a thousand less than at four ounces pressure, it requires the payment of only 75% of the bill; and for gas at two ounces pressure, in which there is only about eight cubic feet of gas per thousand less than at four ounces pressure, it requires the payment of only 50% of the bill; and for gas at one ounce pressure, in which there is only about thirteen feet per thousand less than at four ounces pressure, it requires the payment of only
294 5 25% of the bill, while it provides that all gas used at less than one ounce pressure need not be paid for at all. The

appellant was required to buy this gas in the field, and transport it and furnish it to the consumers, and the appellant had no means of preventing the consumers from using it at the reduced pressures; and the order of the Commission requiring the discounting of the bills in sums wholly and grossly disproportionate to the quantity and heating value of the gas furnished, is unreasonable and arbitrary and operates to deprive this appellant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The order of the Commission is arbitrary and unreasonable, and operates to deprive this appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, for the reason that the particular facts with respect to the individual consumers are not taken into consideration, but each and every patron residing in the district in which the low pressure existed during any given period is awarded the discount upon his bill for that month, even though, during the period of low pressure he was using coal, oil or some other fuel, and even though the whole amount of gas which he consumed was consumed during the period of normal pressure.

9. If the order of the Commission was legislative in character, as is an order fixing rates, then the effort of the Commission to give it a retroactive effect and to apply it to bills incurred during the past and before the making of the order would have the effect of divesting this appellant of property and property rights, which had vested in it, and would operate to deprive this appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, this appellant prays that the court will grant it a rehearing herein, and will reverse and set aside the said order of the Corporate Commission.

AMES, CHAMBERS, LOWE &
RICHARDSON,

Attorneys for Oklahoma Natural Gas Company.

294 6 *Argument and Authorities in Support of Petition for Rehearing.*

First Ground.

The Commission's order of February 23, 1918, requiring the re-rating of gas bills in Oklahoma City which accrued in December, 1917, and January, 1918, was made upon complaints, process and a hearing which did not disclose that such an order was contemplated, and which did not give appellant an opportunity to defend against such an order, and therein denied appellant due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

This proceeding was instituted by the filing with the Corporation Commission of three complaints against this appellant and its distributing agent in Oklahoma City. The first complaint was that of Charles H. Ruth and H. F. Tripp (c. m. 3-7). In that complaint it was alleged that the two gas companies were public service companies, that they had a franchise in Oklahoma City for the purpose of furnishing the inhabitants thereof with natural gas for light, heat and power purposes, and had a virtual monopoly of that business in said city, and that it was the duty of those companies to furnish the city's inhabitants with all the gas reasonably necessary for their needs; that the gas companies had maintained but one pipeline to Oklahoma City, and that had not been sufficient to supply an adequate quantity of gas; that on the 7th, 8th, 9th and 10th days of December, 1917, the gas companies failed to supply an adequate quantity of gas, which caused great suffering and hardship, that it is practicable to maintain tanks and reservoirs for the storage of natural gas in such quantities as will supply the needs of the city's inhabitants during the winter months, and that the companies have not maintained any such reservoirs or tanks. The prayer of 294/7 was, first, that the companies be required to show the amount of gas furnished daily in Oklahoma City since January 1, 1916, and the legal connection, if any, existing between the two companies. Second, that the local company be required to show the daily consumption in Oklahoma City, and what quantity would be necessary to supply the city adequately. Third, that the local company be required to show the Commission what pound or ounce pressure is necessary to be maintained in its mains in order to furnish an adequate supply. Fourth, that the Commission order that immediate provision be made for raising and maintaining the gas to a proper pressure. And, fifth, that the Commission order the immediate construction of suitable tanks or reservoirs of sufficient size to contain a reserve supply of natural gas to adequately supply the needs of the public.

There was no averment that the prevailing rates for natural gas were excessive or unjust, or that anyone was entitled to a rebate on any bill for gas; nor was any change in the rate or any order for a rebate asked for.

The second complaint was that of T. F. Donnell, (c. m. 33-36). He alleged that on the 8th, 9th, 10th, and 11th days of December, 1917, the temperature was below freezing; that during said time the gas company failed to furnish him and other consumers in Oklahoma City sufficient gas for cooking and heating purposes; that this caused suffering and hardships; that the consumers relied upon the gas companies to furnish a supply adequate for their needs; that it was a rule of the gas companies to discontinue service to consumers who failed to pay their bills; and that they were then threatening to disconnect from all consumers who refused to pay their bills even though such consumers might have a just and legal defense thereto. The prayer was that during the pendency of the action the Commission restrain the gas companies from discontinuing service to the complainant and its other patrons "who may have a just and legal

defense or counter-claim to the claims of such gas company," and that such "order be made permanent until such persons and the said gas company may adjust their difficulty or their legal rights be determined in a court of competent jurisdiction," and that such penalty should be imposed upon the gas company as should be warranted. There was no averment whatsoever that the rates in effect were unjust or excessive, and there was no prayer that the Commission award any rebate. The sole relief sought was the punishment of the companies for not furnishing an adequate supply of gas, and the prohibiting of the company from cutting off delinquent patrons until the company and the delinquent patrons could adjust the differences between them, or until a court should determine the matter. Not only was the Commission itself not asked to award any rebates, but it was not even suggested that the alleged differences between the gas companies and their patrons was as to a rebate. It was not intimated that the patrons had or claimed the right to decline to pay the full price for all the gas they actually received and used because they could not get all they wanted. The fair inference was that such controversies as existed were the usual ones over the correct reading of the meters, or whether individual meters registered correctly.

The next complaint was that of Charles B. Selby, (c. m. 43-48). It alleged that the gas companies had wilfully and negligently failed to comply with a prior general order of the Commission directing that all gas companies furnish an adequate supply of gas; that the companies had been wilfully negligent in the construction of their plants and pipe lines; that they had failed to provide more than one pipe line running to the city, and that it was of insufficient size; that the companies had practically the same stockholders; and that petition prayed that the Commission adjudge the gas companies to be in contempt, and that it punish them accordingly, and that the Commission take the control and management of the corporation into its hands. There was no averment that the established rates were unjust or excessive, nor was there any prayer for a rebate on the bills.

Thereafter the three complainants joined in one supplemental complaint (c. m. 27-31), in which they averred that since the filing of the original complaints there had been other days when the gas was short, and that the gas companies were guilty of a further contempt of the Commission in not furnishing an adequate quantity of gas; and they prayed that the Commission forbid the gas companies to cut off consumers claiming defenses against bills rendered, "to the end that such disputes may be determined in due and regular course in the courts which have been designated in the State of Oklahoma for the determination of disputed questions of private rights."

The service on the gas companies in each instance consisted of a letter from the Commission enclosing a copy of the complaint, and stating that the same had been docketed and set for hearing on a certain day. The Commission gave the gas companies no information whatsoever as to what its contemplated action in the premises was, and the companies prepared themselves to meet the averments

contained in the complaints and to resist the granting of the relief which the complainants sought. In other words, the companies prepared themselves to show that they had not been negligent, but had provided ample transportation facilities, and had procured and furnished all the gas which any reasonable, diligent and careful person in the same business under the same circumstances could have procured and furnished, and that the shortage was due to a failing supply and not to any negligence on their part. They further prepared to resist the imposition of any fine upon them for contempt, by showing that they had done all that was reasonably possible. They further prepared to show that storage for natural gas in such quantities as to be of any value was absolutely impossible; and they prepared to show that, while there was not in fact an adequate quantity of gas, yet the meters registered only the quantity of gas which the patrons actually used, and that therefore they should not be forbidden to cut off a delinquent consumer until a trial could be had in a court.

The complaints filed did not ask the Commission for rebates. No claim was made for a rebate by anybody. No claim was made that the patrons ought not to pay for all the gas they actually used. The appellant had no reason to know or suspect that any order requiring a rebate was contemplated in this proceeding either by the complainants or by the Commission. It was given no opportunity 294/10 to defend any claim for rebates, to contest the propriety, legality or constitutionality of it; nor had it any reason to

suspect that the character of the complaints in this case concealed any possibility of an order by the Commission for rebates. No witness testified to the amount which should be allowed in the matter of rebates or that any should be allowed, nor indeed could any such evidence be heard based on the complaints filed in this case. There was an absolute dearth of evidence to sustain a rebate. This order for a rebate was as much a surprise to the complainants as it was to the gas companies. While the rules of practice before the Commission are not technical, yet it is inconceivable that they could be stretched to include a relating order based on complaints of this character.

Due process of law requires that a defendant have an opportunity to defend. This implies, not only that he shall have notice that a proceeding has been instituted against him, but also that the notice given, or the plaintiff's pleading which the notice requires him to answer, shall inform him of the nature and character of the proceeding and what is sought to be required of him. And this is as true as to a public utility before the Corporation Commission as it is with respect to a natural person in the regular courts. If this were not so, then a public utility made defendant to any kind of complaint before the Commission might wake up after reading the order entered to find a judgment against it for all the money it had collected for its services during the past year.

Jurisdiction over public utilities was conferred on the Corporation Commission by act of the Legislature of 1913 (Session Laws 1913, p. 150). This act gives the Commission general supervision over all

public utilities, with power to fix and establish rates and to prescribe rules and regulations affecting their services, operation, and the management and conduct of their business.

This act makes no provision as to the method of procedure or the notice to be given. The authority of the Legislature to confer this power on the Corporation Commission was granted in section 19, article 9 of the Oklahoma Constitution, however, which provided:

294/11 "The Commission may be vested with such additional powers and charged with such other duties (not inconsistent with this constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of Corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith."

It will be observed that the additional powers which were authorized to be conferred upon the Commission were not to be inconsistent with the State Constitution; and therefore the notice of hearing and opportunity for defending against any proposed action on the part of the Commission required by the Constitution as a condition precedent to action by the Commission is applicable with respect to public utilities. If it is not applicable, then there is no provision whatsoever for notice or for an opportunity to be heard, and in such case the Act of 1913 would be void in its entirety. The provision for notice and an opportunity to be heard must be legal or constitutional, and not merely by grace of the Corporation Commission. Thus, in *Coe v. Armour Fertilizer Works*, 237 U. S. 415, 426, the Supreme Court of the United States said:

"Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires. In *Stuart v. Palmer*, 74 N. Y. 183, 188, which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said: 'It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard.' The soundness of this doctrine has repeatedly been recognized by this court. Thus, in *Security Trust Co. v. Lexington*, 203 U. S. 323, 333, the court, by Mr. Justice Peckham, said, with respect to an assessment for back taxes: 'If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material,

294/12 but the question is, whether any notice is provided for by the statute' (citing the New York case). So, in *Central of Georgia Ry. v. Wright*, 207 U. S. 127, 138, the court said: 'This notice must be provided as an essential part of the statutory provision and not awarded as a mere matter of favor or grace.' In *Roller*

v. Holly, 176 U. S. 398, 409, the court declared: 'The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion.' And in *Louis. & Nash. R. R. v. Stock Yards Co.*, 212 U. S. 132, 144, it was said: 'The law itself must save the parties' rights, and not leave them to the discretion of the courts as such.'

In *Chicago etc. R. Co. v. Minnesota*, 134 U. S. 418, the Supreme Court of the United States held that in a proceeding before a Railway Commission to establish rates, due process of law requires that there shall be notice and an opportunity for a hearing and the introduction of evidence before the Commission.

It follows, therefore, that the provision of the Constitution governing the Corporation Commission in the prescribing of rates and the making of orders and regulations must be held applicable, and governing the procedure before the Commission in the matter of public utilities under the Act of 1913, otherwise the Act of 1913 is void. And the Commission has recognized that fact, and in most of its orders has endeavored to conform to the constitutional requirements. Thus in its general order No. 1028 (Annual Report Corporation Commission, 1916, p. 447) requiring corporations engaged in the public business of furnishing gas to furnish an adequate supply, it is recited that the Commission had issued its proposed order, which was published once a week for four consecutive weeks in a newspaper of general circulation published in the city in which the Capitol is located, together with notice of the time and place when the Commission would hear any objection which might be urged by any person or persons interested against said proposed order, which procedure is required by the Constitution in the matter of making general orders and is necessary to due process of law.

The constitutional provision (sec. 19, art. 9) prescribing the process by which the Commission shall fix rates and make orders and regulations is as follows:

294/13 "Before the Commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation, or requirement, shall first be given, by the Commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before said Commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation, or requirement shall first be published in substance, not less than once a week for four consecutive weeks, in one or more of the newspapers of general circulation published in the county in which the Capitol of this State may be located, together with the notice of the time and place.

when and where the Commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement, made by the Commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, so long as it remains in force, be published in each subsequent annual report of the commission."

The record in this case shows that the constitutional provision was never complied with. No claim was made by the complainants that the appellant had charged other than the established rates in force at the time, or that such rates were excessive or discriminatory. No claim was asserted that any person who used gas ought not to pay the full price for the amount of gas he had actually used. No rebate was asked for. We had no opportunity "to be heard thereon." We went before the Commission to defend against a fine for not having and furnishing all the natural gas the complainants wanted or needed, not to defend against an order relieving our patrons from paying for a large part of the gas they actually got and used. We went there also to defend against being required to do the vain act of building storage tanks, to defend against having the commission take physical charge of our property and operate it, and to defend against an order forbidding us to cut off delinquent patrons until the regular courts could determine some alleged disputes between us and them. We never dreamed that the matter of discounting accrued bills was in the mind of anybody until we read the Commission's order in this case.

The Constitution of this State (section 19 of article 9) provides that before the Commission shall fix any rate, or make any order, rule or regulation directed against any company by name, the company to be affected shall first be given by the Commission "at least ten days' notice of the time and place when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon," that is, on the contemplated action. This requires that the company know what the contemplated action is, else it must go through the proceeding blindly. Had the appellant known what the contemplated action in the premises was, it could probably have produced evidence and have made an argument which would have prevented the Commission from making the order; but the appellant determined that the contemplated action was such as was prayed for in the complaints, that is, to fine it for contempt, to require it to construct reservoirs for the storage of gas, to have the Commission take physical charge of the properties of the appellant, and to have the commission forbid the appellant to cut off any delinquent patrons until their disputed bills could be adjusted between the appellant and the patron, or determined by the courts created in the State of Oklahoma for the determination of disputed questions of private right. It had no notice that any other action was contemplated. Those were the actions which the complaints sought to have the Commission take, and those were considered by the appellant as being "the contemplated action in the premises"; and the appellants never

dreamed that such a thing as an order for a rebate could or would be made in this case until the order was actually promulgated. The order was made arbitrarily by the Commission without any prayer for it by the complainants, without any notice of the contemplated action to the appellant, in violation of the express provision of the Constitution of Oklahoma, and in violation of the due process clause of the Constitution of the United States.

Due process of law as required by the Fourteenth Amendment to the Constitution of the United States requires that a person shall not only have notice of the pendency of the action, but also that he shall have notice of the nature and character of the action and of the relief sought, and an opportunity to contest and defend against the particular demand made.

Thus in *Munsy v. Hoboken Land & Development Company*, 13 Howard 272, 280, the Supreme Court of the United States said:

"Due process of law generally implies and includes actor, reus, iudex, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceeding."

In *Davidson v. New Orleans*, 96 U. S. 97, the court said:

"Whenever, by the laws of the state or by the state authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be for the whole state or for some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceeding cannot be said to deprive the owner of his property without due process of law."

It will be observed, however, that in the foregoing it is required that such notice be given as is appropriate to the nature of the case which means that a judgment cannot be rendered against a defendant depriving him of an indebtedness already accrued under existing law upon a complaint which does not disclose that such relief was sought or contemplated, and which did not put the defendant upon his defense as to that property right. A proper complaint or pleading disclosing the nature of the action and of the relief sought, or, as our Constitution puts it, "the contemplated action in the premises," is as essential to due process of law in a judicial proceeding as is the service of a summons or other notice itself. The summons or process is notice to the defendant that some action is pending before a certain tribunal which must be answered at a certain time. The complaint or pleading of the plaintiff, which the summons or process directs the defendant to answer, is notice of the nature and character of the action; and one is as necessary to due process of law, to an opportunity to defend, as is the other.

In *State of Washington, ex rel. v. State Railroad Commissioners*, 224 U. S. 510, it is said:

"The defendant insists, however, that, no matter how complete the right to be heard before the Commission, the statute having denied all other opportunity for testing the validity of the order in the state courts, furnished an utterly inadequate judicial review because, as the carrier could not anticipate what decision would be made, it was unjust to require it to produce evidence, to show in advance, the unreasonableness of an order, the terms of which were not known. From this it argues that the statute was unconstitutional in so far as it prevented the court from receiving competent and non-cumulative testimony tending to prove that there was no public necessity for making the track connection and that the order was void.

"This position would be true if the defendant had not been put on notice as to what order was asked for and then given ample opportunity to show that it would be unjust or unreasonable to grant it. In this case, and under the statute, it was given such notice. The complaint alleged that some of the towns were important shipping points and that at all of them there was a public necessity that the roads should be connected. The defendant denied each of these allegations. The hearing, both on the law and the facts, was necessarily limited to that issue. There could have been no valid order which was broader than that claim."

Here the appellant was not put on notice that rebates were asked for. They were not asked for. The appellant was given 94/17 no opportunity to defend against a contemplated order awarding rebates, because it never dreamed that such action was contemplated. In the language of the Supreme Court of the United States quoted above, "the hearing both on the law and the facts was necessarily limited" to what was asked for in the complaints and "there could have been no valid order which was broader than that claim."

The Supreme Court of the United States holds that the judicial departments of the state are themselves subject to the restriction of the due process requirement (*Hovey v. Elliott*, 167 U. S. 409); that a state may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment to the Constitution of the United States (*Chicago Etc. R. Co. v. Chicago*, 166 U. S. 226, 234); that the judgment of a state court, or other tribunal of last resort, is the act of the state (*Fayerweather v. Fitch*, 195 U. S. 276, 278); and in determining whether due process of law has been denied in a given proceeding, the Supreme Court of the United States will look to substance and not to form, and will interfere whenever necessary for the protection of rights against an arbitrary exercise of power (*Davidson v. New Orleans*, 96 U. S. 97, *Chicago Etc. R. Co. v. Chicago*, 166 U. S. 226, *Long Island Water Supply Company v. Brooklyn*, 166 U. S. 685, *Backus v. Fort Street Union Depot Co.*, 169 U. S. 557). It is further held that the state cannot make anything due process it may choose to declare such.

We submit therefore that there was never a trial or hearing upon the question as to whether or not rebates should be made, or the amount thereof. The Commission put in evidence a letter from the

Ohio Public Utilities Commission showing the relative quantities of gas that were deliverable through a meter at different pressures, and the relative heating value of gas at different pressures, and also an experiment made by some employee of the Oklahoma Gas & Electric Company in respect to that matter and previously furnished the Commission in the form of a letter. The defendant put in evidence certain testimony of Dr. De Barr and Mr. Locke upon the same

question. But none of that evidence was put in as a basis for rebates, and the order for rebate does not conform to that evidence in any particular. On the contrary that evidence was put in as showing that the patrons of the company were getting and using the quantity of gas which their meters showed they were using, and that the Commission therefore should not prohibit the gas companies from discontinuing service to those who refused to pay their bills pending the institution and trial of contemplated cases in the courts of the state. There was therefore no trial upon the question either as to whether rebates should be made or the amount thereof. The defendants had no notice that a trial would be had upon that question or that any such order was contemplated, and therefore no opportunity to defend against it. The first notice they had of it was the promulgation of the order; and that does not constitute due process of law. The Commission found that the gas companies had not been negligent, and it denied everything asked for by the complainants; it then made an order not asked for, and which neither the complainants nor the appellant anticipated, and against which the appellant had no opportunity to defend.

Second and Seventh Grounds.

Due process of law does not depend solely on whether a hearing was had before a legally constituted tribunal, or whether an appeal may be taken; but the action of a legally constituted tribunal, even in a regular hearing, and of the appellate court on appeal, requiring a person to forego property rights without evidence legally justifying the same, operates to deprive such person of his property without due process of law in violation of the Fourteenth Amendment; and the same was done here.

The order for rebating these accrued bills for gas, even if appellant had had notice that such an order was contemplated, could validly have been based upon one or the other of only two conditions. The first condition was that the gas company had been negligent in the performance of its public duty whereby its patrons had been damaged in sums which might be awarded them in the form of a discount on or a counter-claim or set-off to their past but unpaid bills. That condition did not exist. The evidence showed that it did not exist, and the Commission expressly found that it did not exist. The only evidence tending to show negligence was the admitted fact that there was a shortage of gas, a commodity which only nature makes, the supply of which has a natural limitation. It was shown that appellant had ample transportation facilities, that it had two pipe lines to Oklahoma City

instead of one, and that its failure to furnish an adequate supply was due solely to the fact that the requisite quantity of gas was not available to it. And the Commission expressly found that the charge of negligence against appellant was "unfounded and unreasonable."

The other condition was that, if the amount of gas with which the customers were charged had not in fact been furnished them, then it would have been proper to rebate or reduce the bills to the legal charge for the gas actually furnished and used. There was no evidence that that condition existed, and the Commission did not find that it existed as to a single person. What it did do was to make an ex post facto law discounting past bills of all consumers, without regard to the particular facts as to them, on the basis of pressure, allowing the collection of the full bill where the pressure had been 4 ounces, of only three-fourths of the bill where the pressure had been 3 ounces, of only half of the bill where the pressure had been 2 ounces, of only a fourth of the bill where the pressure had been 1 ounce, and forbidding appellant to collect anything where the pressure had been less than 1 ounce; and it rendered a judgment on that ex post facto law at the same time it made the law, and applied it to indebtednesses incurred before the law was made. And it did that notwithstanding all the evidence in the case, the undisputed evi-

dence, showed that the only difference between the quantity and heating value of a given mass of gas at 4 ounces pressure and the quantity and heating value of the same mass at 1, 2 and 3 ounces pressure is only 13, 8 and 4 cubic feet of gas respectively in a thousand. In other words, the man who got 1,000 cubic feet at 4 ounces pressure, which is equivalent to 1,017 cubic feet at atmospheric pressure, is to pay the full bill; but the man who got only 4 feet less in the thousand and in heating units is to pay only 75 per cent of his bill; the man who got 8 feet less in the thousand and in heating units is to pay only 50 per cent of his bill; the man who got only 13 feet less in the thousand and in heating units is to pay only 25 per cent of his bill; while the man who got gas at any pressure between one ounce and atmospheric is to pay nothing.

The Commission itself introduced in evidence information furnished it by the Ohio Public Utilities Commission (c. m. 163), showing the relation of pressure to quantity and heating value of gas, which was as follows:

"The meter will register the same amount of gas regardless of delivery pressure. In other words, domestic meters measure volume irrespective of pressure. The relation of pressure to heating value is illustrated as follows: One thousand feet of gas at atmospheric pressure will give a certain amount of heat. The heat of one thousand feet of gas under one ounce pressure will give the equivalent to 1004.2 feet; under 2 ounce pressure 1008.5 feet; under 3 ounce pressure 1012.7 feet; under 4 ounce pressure 1,017 feet; under 5 ounce pressure 1021.2 feet; and under 6 ounce pressure 1025.5 feet."

In other words, one has a container with a capacity of exactly one thousand cubic feet, and he fills it with gas at atmospheric pressure,

that is, the pressure of the gas within the container exactly equal to the pressure of the atmosphere on the outside, or 14.4 pounds to the square inch. Then, if he wishes to increase the pressure of the gas to one ounce, he may do so by adding to the quantity in the container only 4.2 cubic feet of gas; to increase the pressure from atmospheric to two ounces, it is necessary to add only 8.5 cubic feet; to increase the pressure to three ounces, he must add only 12.7 cubic feet, and to four ounces only 17 cubic feet. That is to say, the difference between the quantity and heating value of gas furnished at a pressure of four ounces above atmosphere and that furnished at three ounces is the difference between 1,017 cubic feet and 1012.7 cubic feet, or 4.3 cubic feet of gas in each thousand, or less than half of one per cent. The difference between the quantity and heating value of gas furnished at four ounces pressure and that furnished at two ounces pressure is the difference between 1,017 and 1008.5 cubic feet, or 8.5 cubic feet of gas in each thousand, or not quite one per cent. The difference between the quantity and heating value of gas furnished at four ounces pressure and that furnished at one ounce pressure is the difference between 1,017 and 1004.2 cubic feet, or 12.8 cubic feet of gas in each thousand, or about one and a quarter per cent.

The Commission introduced that evidence itself. And that evidence is true. It was not an error or a mistake. In Bulletin 16, part 7, entitled "Natural Gas, Its Production, Service and Conservation," issued by the Smithsonian Institute and published by the United States, it is said on pages 44 and 45:

"Effect of pressure or temperature on heating value of gas. The will produce changes in volume, but will neither destroy nor create any heat units, and hence will neither increase nor decrease the total number of heat units contained in the gas. However, the volume changes will alter the distribution of the total number of heat units as follows:

Gage pressure above atmosphere.	Relative British thermal units.	Relative per cent.
4 ounces	1017	101.7
3 ounces	1013	101.3
2 ounces	1009	100.9
1 ounce	1005	100.5
0 ounce	1000	100. "

That is to say that a thousand cubic feet of gas metered at four ounces pressure contains only 1.2 per cent more heat units than 1000 cubic feet furnished at one ounce pressure, but for that the Commission arbitrarily made a difference of 75 per cent in the amount collectible on past bills.

294/22 Dr. Edwin De Barr, who holds the Chair of Chemistry at the University of Oklahoma also testified on the subject. He testified (c. m. 143) that atmospheric pressure is 14.4 pounds, which is 230.4 ounces. If gas is delivered at one ounce pressure, that is one

ounce above atmospheric, then it is delivered at 14.4 pounds plus one ounce, or 231.4 ounces; at two ounce pressure, 232.4 ounces; at three ounce pressure, 233.4 ounces; and at four ounce pressure, 234.4 ounces; and that the relative quantity and heating value of the gas furnished at one ounce and at four ounces is in the proportion of 1.4 to 234.4, or 1000 cubic feet of gas at one ounce pressure equals out 99 per cent in quantity and British Thermal Units of 1000 cubic feet of gas at four ounces pressure.

Mr. R. H. Locke, a chemical engineer, also testified to the same thing (c. m. 150).

Mr. A. L. Mitchell, of the Oklahoma Gas & Electric Company, submitted a test which he made showing the number of cubic feet a meter would register in a given time at different pressures (c. m. 181). This showed that at 4 ounce pressure the meter would register 3.6 cubic feet in 3 minutes. At 3 ounce pressure its registered 3 cubic feet in 3 minutes. At 2 ounce pressure, 2.5 cubic feet in 3 minutes. At 1 ounce pressure 1.65 cubic feet in 3 minutes. And at half ounce pressure, .98 cubic feet in 3 minutes. This table has nothing to do with the relative heating value of the same quantity of gas at different pressures, as did the testimony of the Ohio Commission, Dr. De Barr and Mr. Locke; but this table shows that the meter registers a smaller quantity of gas in the same length of time at a lower pressure than at a higher. In other words, as Mr. Thomas Weymouth, an expert natural gas engineer of the United Natural Gas Company of New York, puts it:

"The delivery of gas would be slower under a low pressure: As for example, a service consuming 100 cubic feet an hour at 4 ounces would receive gas approximately as follows when the pressure changes:

"At 4 oz. pressure	100 cu. ft. in one hr.
"At 3 oz. pressure	86 cu. ft. in one hr.
"At 2 oz. pressure	71 cu. ft. in one hr.
"At 1 oz. pressure	50 cu. ft. in one hr.

423 "A meter would only register the above amounts under the various pressures and conditions mentioned, and the consumer would pay only for the amount of gas consumed."

In other words, according to Mr. Mitchell, at four ounces pressure a consumer would get and his meter would register 3.6 cubic feet in three minutes, and the consumer would have to pay for that quantity. At one ounce pressure the consumer would get and his meter would register only 1.65 cubic feet in three minutes, and that all he would have to pay for. But that 1.65 cubic feet at one ounce pressure is 99 per cent as efficient for heating as the same quantity at four ounces pressure would be. The only difference is the quantity the consumer gets. But he is not charged with what he does not get. And that is also asserted by Bulletin 102 of the Smithsonian Institution, part 7, page 42.

The Dallas News of December 20, 1919, contained an article

from Ed. C. Connor, Chief Engineer to the Supervisor of Public Utilities of Dallas, which was as follows:

"Because of many requests for information regarding the possibility of paying for gas a customer never gets and because of complaints charging that bills are higher during low pressure periods Ed. C. Connor, chief engineer to the Supervisor of Public Utilities, has prepared a report in explanation. According to Mr. Connor's report, which Mr. Milam is enclosing in answer to these requests and complaints, there would be only slight variation in the amount of gas bills regardless of pressure, as the actual amount of gas used is the basis of calculation.

"Mr. Connor said it is a fallacy to believe that when the pressure is low the meter registers more rapidly, and in his letter which follows, explained the working of the meter with relation to pressure.

"Referring to recent letters complaining of relatively high gas bills during low pressure periods and more particularly to the point raised in regard to the question as to whether or not the customers of the Dallas Gas Company are paying for more gas than they receive, owing to inadequate pressures, I beg to submit the following analysis:

"The meters used by the Dallas Gas Company are displacement meters, and the difference in the amount of gas delivered would be directly proportional to the actual gas volume, as determined by the comparative pressures. This fact being based on the fundamental law that the volume of a given quantity of gas is inversely proportional to its pressure.

"Assuming, therefore, an atmospheric pressure at Dallas of 14.4 pounds, and that the meter of the customer is tested and regulated on a delivery pressure of four ounces above atmosphere, the absolute pressure of the gas measured and delivered at this pressure would be 14.650 pounds. Assuming that during the period covered by the meter reading, the pressure of delivered gas is two ounces above atmospheric pressure, the absolute pressure of the gas delivered under these conditions would be 14.525 pounds. The difference, therefore, between these absolute pressures is .125 pounds. Expressed in percentage of difference, this is represented by the fraction $\frac{.125}{14.650}$, or .008. In other words, a cubic foot of gas passed through a displacement meter at 14.650 would in effect be .008 greater in actual quantity delivered than a cubic foot of gas delivered at the lower pressure indicated, or 14.525.

"Reducing this analysis to a question of dollars and cents, should a man be billed \$10 for gas based on a constant absolute pressure of 14.650, and the gas actually delivered at 14.525, which would represent a 50 per cent reduction in actual gas pressure above atmospheric pressure for the entire period of the billing, the difference in his gas bill would be less than 8c. for the period.

"As a matter of fact, the meters used by the Dallas Gas Company are tested both by the City Gas Inspector and themselves, for an absolute pressure of approximately 14.46, or one ounce above atmospheric pressure. It will be seen, therefore, that any gas being used would be registered with a considerably smaller percentage of error than that indicated above."

The court needs no evidence to establish that fact any more than the court would need evidence as to the law of gravity. It is a scientific fact, a law of physics, a law of nature, of which the court can inform itself and of which it can take judicial knowledge. Thus the law of physics is that the volume of all gases vary inversely in proportion to their absolute pressure. Atmospheric pressure is absolute pressure. Atmospheric pressure in this part of Oklahoma is 14.4 pounds per square inch. If you double the absolute pressure upon a given quantity of gas, you have the volume. Thus, if you have 1000 cubic feet of gas at atmospheric pressure, that is, 14.4 pounds, and by compression you double the pressure, that is, make it 28.8 pounds, you reduce the volume to 500 cubic feet. Or if you have a container holding 1000 cubic feet of gas at atmospheric pressure, and you force into that container another 1000 cubic feet, you will have raised the pressure to 28.8 pounds, that is, you will have doubled the absolute pressure and at the same time will have doubled the quantity and heating units of the gas. But if you have 1000 cubic feet of gas in a container at a gage pressure of one ounce, that means it has a pressure of one ounce above atmosphere, or 14.4 pounds plus one ounce. If you add enough gas to that container to raise it to two ounces pressure, you will not have doubled the absolute pressure but only the gage pressure, and you have not doubled the quantity or heating value of the gas. One ounce gage pressure is to two ounces gage pressure as 14.4 pounds plus one ounce is to 14.4 pounds plus two ounces.

The averments in the complaints touching the matter of consumers' bills were to the effect that "the meter readings are false and untrue and the supply of gas which the meters indicate have been furnished to the various customers of said company has not been in fact furnished." The appellant thought that was what was to be tried, and not whether the patrons should be relieved from paying the full price for the gas they actually used as shown by genuine and true meter readings, or as otherwise ascertained, merely because they wanted more and couldn't get it. The Commission did not find that a single meter reading was false or untrue, or that a single patron did not in fact use every foot of gas his meter registered. The Commission found that the gas companies were doing the best they could, and that the charge of negligence against them was unfounded and unreasonable. Yet it ordered that where a patron, instead of closing his burner, used gas at less than one ounce pressure, he need not pay a cent for it, notwithstanding the meter correctly registered only the amount he used, and notwithstanding the difference between the quantity and heating value of gas at half ounce pressure and at four ounce pressure is less than 15 cubic feet in the thousand, or 1½ per cent. Such an order, even prospective in its operation, would deprive the appellant of its property without due process of law and would violate the Fourteenth Amendment, to say nothing of its effect when applied retroactively.

Notwithstanding the difference between the relative quantity and heating value of gas delivered at a four ounces pressure and the same quantity at one ounce pressure is only 12.8 cubic feet in each 1,000,

or about one and a quarter per cent, yet for that one and — quarter per cent reduction in the quantity and heating value, which the appellant could not help, it is by the ex post facto order of the Commission required to forego 75 per cent of the bill. And the gas company had to buy that gas and pay the full price for it, and it had to transport it and deliver it. That may be due process of law, but we do not think so.

The foregoing was all the evidence in the record on the subject. Far from sustaining the order, the evidence emphatically denounces it as arbitrary and unreasonable.

This court in its opinion made the statement, and based its decision partly upon it, that the appellant was not furnishing a commodity so much as it was rendering a service. There is less truth in that statement with respect to a gas company than there is with respect to any other public service. A telephone company, for instance, wires your house, installs its own instrument therein, connects you with its exchange and furnishes the operator. If the wires are injured or the instrument gets out of order, the telephone company makes the repairs. In other words, it furnishes a service pure and simple. You have nothing to do but use its instrument. While an electric light company does not wire your house or furnish your fixtures or globes, yet the wires and globes are so standard and so simple that, after their installation, all that is required of the patron is to push a button to get service. And as to a water company, the patron, though he pipes his own house, has merely to turn a faucet to get service.

294 27 In the gas business the conditions are wholly different.

Whether the patron will have adequate service is more nearly dependent upon the patron himself than it is in any other public business. Whether the patron will have adequate service will depend, first, upon the size of his service pipe running from the curb into his house. The patron furnishes this and installs it himself, and the gas company has no control over the size of the service pipe the patron chooses to use. It depends next upon the size of the lateral pipes running from the service pipe to the various rooms in the house. The patron installs these himself, and the gas company has no voice in determining their size. It depends next upon the character and efficiency of the furnaces, stoves and ranges which the patron may use, with respect to holding and properly applying the heat generated by the combustion of the gas. The patron furnishes these, and he is free from the control of the gas company in doing so. It depends next upon the character of the burners used with respect to the proper combustion of the gas. These also belong to the patron and are selected by him. It depends next upon the proper adjustment of the burners, the proper mixing of the gas with air, and the keeping of the pipes, air mixers and burners clean. All this is to be done by the patron. And the use of proper appliances properly adjusted in efficient furnaces, stoves and ranges, all of which devolve on the patron himself, spell the difference between adequate and inadequate service at low pressures. The United States Bureau of Mines has issued a bulletin, technical paper

257, entitled "Waste and Correct Use of Gas in the Home," in which it is said:

"Gas service is radically different from every other kind of public utility service in that the gas cannot be used by the consumer as received, but first must be mixed in proper proportion with another substance (atmospheric air); second, this mixture must then be completely burned; third, the flame must be so directed that the heat generated will effectively get into the food, air, water or mantle that is being heated, with a minimum of loss. The results obtained will depend primarily upon the gas utilization appliance and the consumer's skill and care in operating. All these operating 294 28 features are beyond the gas company's control, but are vital in determining the quality of the service produced by one consumer and the effect on the service of other consumers."

In the introduction to that bulletin Mr. Van H. Manning, Director of the Bureau of Mines, said:

"Domestic consumers waste more than 80 per cent of the gas received. The efficiency of most cooking and heating appliances could be trebled. By making natural gas worth saving the 2,400,000 domestic consumers in the United States could get the same cooking and heating service with one third of the gas, that is, make one foot of gas do the work of three, and greatly delay the day when the present supplies will be exhausted and consumers must go back to more expensive manufactured gas."

In the Bulletin of the Smithsonian Institute heretofore quoted from, it is said on page 40:

"The use of natural gas in the fire pot of a coal furnace gives an efficiency of about 25 per cent. The use of natural gas in an ordinary gas furnace gives an efficiency of about 35 per cent. The use of natural gas in a correctly designed and built gas furnace, where the construction conditions permit the fullest utilization of the heat in the gas, gives an efficiency of about 75 per cent.

"In tests made by the department of home economics, Ohio State University, the efficiency of a natural gas range varied from 37 per cent with two-tenths of an ounce pressure down to 13 per cent at four ounce pressure."

On page 41 of the same bulletin it is said:

"The pressures carried by most natural gas companies have been too high for efficient service. This has had the further undesirable feature of teaching the consumer to believe that he was not receiving service unless the gas could be heard hissing through the orifice in the gas mixture. It has been demonstrated that—

"1. Satisfactory cooking operations in frying potatoes, boiling potatoes, frying beefsteak, and pan-broiling beefsteak can be carried on with 0.2 ounce natural gas pressure. This merely requires that

the short flame and cooking vessel be brought together.
294 29 The changes in vessel position necessary to permit satisfactory operation at pressures as low as 0.2 ounce are easy to make, require no special changes in existing stoves, and consist merely, with drilled burners, in placing three nails in three of the drilled holes, and, with slotted burners, of placing three small pieces of tin in three of the slots, in order to support the cooking vessel at the proper distance from the burner, and close enough so that the short flame can do effective work.

"2. Better results are obtained with pressures in the neighborhood of 2 ounces than at 4 or 5 ounces.

"3. Less gas is used at pressures in the neighborhood of 2 ounces than at 4 or 5 ounces.

"4. Manufactured gas range gives better results than natural gas range because the former is designed for low pressure.

"5. There is very little difference in the time required to carry on cooking operations with pressures of from 1 to 5 ounces.

"Therefore, if the consumer will use proper appliances, satisfactory cooking operations can be carried on with pressures as low as 0.2 ounce and the gas passing through the meter will perform a usable service.

"With heating appliances, if the mixer is properly adjusted the combustion at low pressures can be made substantially as thorough as at high pressures, and the consumer can have the benefit of all the heat generated by the burning gas, although if the pressure is low he will invariably not have nearly as much as he would like to have or as he needs. However, all of the gas measured by the meter and burned in the heating appliance is used for a useful service, so far as it goes, although under extreme low pressure conditions there is not enough to give all consumers all they want."

Miss Olga Elifritz, of the United States Bureau of Mines, made a demonstration before the Corporation Commission a few days ago, frying an egg with two-tenths of an ounce gas pressure; and she testified that she could easily cook an entire meal with one-half ounce pressure. She is now carrying on a campaign at Dallas, Texas,

under the direction of the Bureau of Mines for the use of
294/30 efficient appliances and the utilization of the gas at low pressures, a conservation measure.

Kansas City has now learned the lesson, and the highest pressure at which gas is furnished there now is 2 ounces, and the homes are comfortably heated. At Ottawa, Kansas, natural gas is furnished to the consumers at only one and three-fourths ounces pressure, and the homes are comfortably warmed, and the rate is 80 cents per thousand.

It is therefore true that the furnishing of natural gas partakes more of the furnishing of a commodity and less of rendering a service than does any other public service business; and that more is

required of, and more is dependent upon, the consumer himself in the matter of efficient service, than there is in any other public business. Indeed, all the gas company does is to deliver the gas into its customer's service pipe, just as a coal dealer delivers the coal into his customer's basement. The result is dependent upon the customer himself.

We have then this situation: The appellant was not negligent in the performance of its public duty. It furnished all the gas it had and could get. The Commission did not find that a single consumer was charged for a foot of gas he did not receive and use. But because of the fact that, due to the failing of the supply in the fields, the extreme cold weather and the peak load demand, the pressure became low so that the consumers could not get all the gas they wanted or needed, the Commission ordered that the patron need not pay for all the gas he actually got. It ordered that if he received 1,000 feet at four ounces pressure he should pay the full bill; that if he received 1,000 feet at three ounces pressure, which lacked in heating value less than one half of 1 per cent of equaling 1,000 feet at four ounces, he should pay only 75 per cent of the bill; and on down the scale to where, for gas at less than one ounce pressure he was to pay nothing. A deduction of 25 per cent in the bill for a reduction of one half of one per cent in the quantity and heating value of gas furnished, is unreasonable and arbitrary. A deduction of 50
294 31 per cent in the bill for a reduction of eighty-five hundredths of one per cent in the quantity and heating value of the gas furnished is also unreasonable and arbitrary. And what shall we say of that portion of the order annulling the entire bill for gas used at a pressure under one ounce? The reason the Commission did this was, not because the patron did not receive and use the quantity with which he was charged and at the pressures named, and not because the gas furnished did not have the relative heating quality which the evidence showed, but merely because the customers needed more than they got and the appellant was not able to furnish it to them. And notwithstanding the Commission found the appellant was doing the best it could, it ordered it to forego its pay for the gas actually furnished because it could not furnish more.

If the nature and character of the consumers' appliances were such that they could not efficiently use the gas at two or three ounces pressure, was that the gas company's fault? It did not furnish the appliances and was under no obligation to do so. It could not even control the patron in his choice or use of them. The United States Bureau of Mines says that better service is obtained with pressures in the neighborhood of two ounces than at four ounces; but they say that it depends on the patron himself.

And so we say that, assuming for the sake of argument that proper notice of the Commission's intention to consider ordering a rebate had been given us and that the hearing was before a legally constituted tribunal, where we could contest the propriety of the order, and from which we had an appeal, nevertheless to require us to forego a large proportion of the indebtedness due us for gas actually

furnished and used because we could not with all due diligence furnish all our patrons wanted, is a taking of our property without warrant of law which no form of notice or hearing could convert into due process. The rendition of a judgment without evidence of facts legally warranting it does not constitute due process of law.

In its opinion herein this court said, "The question is whether there is evidence in the record to support the Commission's order. Findings of fact by the Commission are by section 22, article 9, of the Constitution, *prima facie* just, reasonable and correct."

There is not a syllable of evidence in the record supporting the Commission's order, and neither the Commission nor this court pointed out any. The Commission's own findings do not support the order. The Commission found every fact in appellant's favor except the bare fact that the supply of gas was not adequate to furnish the patrons all they needed; and as to that the Commission found that the assertion that the inadequacy was due to any fault or negligence on the company's part was unfounded and unreasonable. And if the accrued bills were to be discounted in proportion to the amount and heating value of the gas furnished, then the only evidence upon that subject was that of the Ohio Commission, Dr. De Barr and Mr. Locke; and far from supporting the order, the evidence of those witnesses stamp it as arbitrary, capricious, unreasonable, and unjust. The Commission made the order without evidence, against the evidence, and without any basis in law or fact.

In *The Interstate Commerce Commission v. L. & N. R. Co.*, 227 U. S. 88, the Supreme Court of the United States said:

"But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our Government. It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the indisputable character of the evidence." *Tang Tun v. Edsell*, 233 U. S. 673, 681; *Chin Yoh v. United States*, 208 U. S. 8, 13; *Low Wah Suey v. Backus*, 225 U. S. 469, 468; *Zakonaite v. Wolf*, 226 U. S. 272; or if the facts found do not, as a matter of law, support the order made. *United States v. B. & O. S. W. R. R.*, 226 U. S. 11; Cf. *Atlantic C. L. v.*

North Carolina Corp. Com., 206 U. S. 1, 20; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 287, 301; Oregon Railroad v. Fairchild, 224 U. S. 510; I. C. C. v. Illinois Central, 215 U. S. 452, 470; Southern Pacific Co. v. Inter-state Com. Comm., 219 U. S. 433; Muser v. Magone, 155 U. S. 210, 217.

"The Government's claim is not only opposed to the ruling in I. C. C. v. Union Pacific, 222 U. S. 541, 547, and the cases there cited, but is contrary to the terms of the Act to Regulate Commerce, which, in its present form, provides (25 Stat. 861, Sec. 17) for methods of procedure before the Commission that "conduce to justice." The statute, instead of making its orders conclusive against a direct attack, expressly declares that "they may be suspended or set aside by a court of competent jurisdiction." 36 Stat. 539 (15). Of course, that can only be done in cases presenting a justiciable question. But whether the order deprives the carrier of a constitutional or statutory right; whether the hearing was adequate and fair, or whether, for any reason, the order is contrary to law—are all matters within the scope of judicial power.

"Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order. Int. Com. Comm. v. Northern Pacific Ry., 216 U. S. 538, 544. In a case like the present the courts will not review the Commission's conclusions of fact (Int. Com. Comm. v. Delaware, Etc. Ry., 220 U. S. 235, 251), by passing upon the credibility of witnesses, or conflicts in the testimony. But the legal effect of evidence is a question of law. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary 294 34 to law and must, in the language of the statute, 'be set aside by a court of competent jurisdiction.' 36 Stat. L. 551.

"The Government further insists that the Commerce Act (36 Stat. 743) requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created, and having been given legislative power to make rates it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such information, even though not formally proved at the hearing. But such a construction would nullify the right to a hearing,—for manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain, or refute. The information gathered under the provisions of section 12 may be used as a basis for instituting prosecutions for violations of the law, and for many other purposes, but is not available, as such, in cases where the party is entitled to a hearing. The Commission is an administrative body, and, even where it acts in a quasi-judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. Int. Com. Comm. v. Baird, 194 U. S. 25. But the

more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown but presumptively sufficient information to support the finding. *United States v. Baltimore & Ohio S. W. R. R.*, 226 U. S. 14.

"As these contentions of the Government must be over-
294 35 ruled, it is necessary to examine the record with a view to determining whether there was substantial evidence to support the order."

In *State of Washington ex rel. Oregon Railroad Company v. State Railroad Commissioners*, 224 U. S. 510, the Supreme Court of the United States said:

"The Commission's order requiring the Oregon Company to make track connections was not a mere administrative regulation, but it was a taking of property, since it compelled the defendant to expend money and prevented it from using for other purposes the land on which the tracks were to be laid. Its validity could not be sustained merely because of the fact that the carrier had been given an opportunity to be heard, but was to be tested by considering whether, in view of all the facts, the taking was arbitrary and unreasonable or was justified by the public necessities which the carrier could lawfully be compelled to meet. For the guaranty of the Constitution extends to the protection of fundamental rights—to the substance of the order as well as to the notice and hearing which preceded it. The mere form of the proceeding instituted against the owner, even if he be admitted to defend, cannot convert the process used into due process of law, if the necessary result be to deprive him of his property without compensation." *Chicago, Etc., Ry. v. Chicago*, 166 U. S. 226, 236; *Missouri Pacific Ry. v. Nebraska*, 164 U. S. 403, 416. So where the taking is under an administrative regulation the defendant must not be denied the right to show that as matter of law the order was so arbitrary, unjust or unreasonable as to amount to a deprivation of property in violation of the Fourteenth Amendment. *Chicago, Etc., R. R. v. Minnesota*, 134 U. S. 418; *Smyth v. Ames*, 169 U. S. 466; *Chicago, Etc., R. R. v. Tompkins*, 176 U. S. 167, 175."

Here the defendant had no opportunity to show that rebates ought not to be made, for it had no notice or knowledge, until the order was actually promulgated, that rebates were contemplated.

Here also there was no evidence whose legal effect warranted or justified the order made, and the making of the order upon the evidence adduced was a mere arbitrary exercise of power, in violation of the Fourteenth Amendment.

294, 36

Third Ground.

All that portion of the Commission's General Order No. 1028 which was valid had been complied with; and that portion of the order which purported to require a natural gas company to supply fully the wants and needs of its patrons at all times, whether by the exercise of care and diligence it could be done or not, is arbitrary and unreasonable, and its enforcement would operate to deprive the appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

The Commission's General Order No. 1028, issued on April 20, 1916, purported to make two requirements of gas companies. First, it required them "to so construct and equip and maintain their pipe lines, mains and distributing systems as to be able at all times to furnish an adequate supply of gas for domestic consumption." Second, it ordered them "to furnish and supply at all times an adequate amount of proper quality for heating, cooking and lighting, for domestic consumption."

As we shall show in the discussion of our next ground for rehearing, this order had no relation to rates; it was not intimated therein that any graduation of rates was contemplated or required. The order, insofar as it was valid, was a mere statement of the common law duty of one in the public service, and added nothing to what was already the law. But we pass that question for the present.

Two things are necessary in order to furnish an adequate supply of gas. One is the existence in the gas field of an adequate supply available to the company. The other is the construction, equipment and maintenance of such pipe lines, mains and distributing systems as are necessary for the transportation and delivery of an adequate supply. Unless both exist, an adequate supply cannot be furnished. The first portion of the Commission's order dealt only with the transportation and distribution facilities. Inasmuch as, by the expenditure of the requisite amount of money, adequate transportation and distribution facilities can be constructed and maintained, it was humanly possible to comply with that portion of the order, and, reasonably construed, it was valid.

But we had complied with that portion of the order. We had ample transportation and distribution facilities. We had two large pipe lines from the field to Oklahoma City. If we had had the gas to put through them, they were ample to supply more than twice Oklahoma City's requirements. They had done so before. Before the industrial consumption was cut off they even supplied both the domestic and industrial consumers without taxing half

their capacity, and the industrial consumption was fifty per cent greater than the domestic. And industrial consumption had been cut off, while the transportation and distribution facilities remained as they were. And the Commission's order only required provision for "domestic consumption." There was no evidence that our transportation and distribution facilities were not adequate. The evidence was full and uncontradicted that they were adequate. The Commission did not find that they were inadequate.

But the second portion of the Commission's Order No. 1028 purported to go further. It purported to require us unconditionally to furnish and supply an adequate quantity. That necessitated the possession, not only of adequate transportation facilities, but also of an adequate supply of gas in the field to put through them. The latter fact did not exist. However adequate our transportation facilities, we could only supply through them such gas as we had and could get. And it was humanly impossible to furnish an adequate quantity when that quantity was not to be had.

Under the law, when a natural gas company undertakes to furnish gas to the public, it dedicates to the public the supply it has, but it does not covenant to extend its lines to new or distant fields, and cannot be required to do so. (Fidelity Title Trust Company v. Kansas Natural Gas Company, 238 Fed. 614; Atchison T. & S. F. R. Co. v. Railroad Commission (Cal.) 160 Pac. 828). Mr. Wyman, in his work on Public Service Corporations, sec. 271, says:

"Where the supply that is offered has a natural limitation, it will usually be found that the profession (to serve) is limited to the exploitation of that supply. Thus a company which undertakes to supply natural gas from a given field cannot be held liable for the failure of the supply to meet the demands of the community."

Again, in sec. 652, the same author says:

"In irrigation we have a typical case of natural limitation. When the flow of a stream is diverted by irrigation works, the profession of the managing company may fairly be said to be confined to the water that may fairly be appropriated. It is consequently under no duty to provide other sources of supply even against recurrent drouths, as its obligation is limited to the proper diversion of the appropriated water. Only while it has available water is it bound to supply applicants."

But this appellant did not content itself with doing only what the law required of it. The evidence showed that it went from field to field, that it took gas wherever it could get it, wherever it was available, and that it paid prices extortionate even for war time for pipe to lay to new fields, and that it was drawing on every foot of gas available to it or which care and diligence could make available. It had done and was doing everything humanly possible, and it could not help the fact that the supply was failing. In answer to the charge of negligence made against us in our endeavor

to furnish an adequate supply the Commission itself found and stated:

"Thus viewing the situation in the light of the facts as they are, and laying aside all bias naturally arising on account of unsatisfactory service, the justice of the situation impels the conclusion that the charge of negligence in this respect is unfounded and unreasonable."

On page 18 of the Smithsonian Institute's Bulletin 102, part 7, published by the United States, entitled "Natural Gas; Its 294/39 Production, Service and Conservation," it is said:

"Food and trees can be grown. Water supplies are constantly replenished by nature, but there is no regeneration in natural gas; and when the gas is once used it is gone forever. While no one knows exactly how the natural gas is formed, yet enough facts are known about it to indicate that nature's process was a very slow one. It has taken millions of years to make the present concentrated supplies, and even though gas should now be formed in some parts of the earth's crust, the rate of formation will be so slow as to make such new gas pools of no interest or economic value for centuries, if ever."

On page 21 of the same bulletin, it is said:

"Natural gas is an exhaustible resource that when once used is gone forever. Every time a natural gas company sells 1,000 cubic feet of gas it is selling a part of its property. Furthermore, the number of natural gas consumers is increasing faster than the number of producing wells, thus placing an additional burden on each well, and the wells that are being drilled at the present time have a lower average capacity than wells that were drilled several years ago, in this way making less gas available."

Again, on page 23, it is said:

"The natural gas business is unique in that it is the only public utility service that does not, and in fact can not, create the basic feature of the service that it renders to the public. Manufactured gas companies merely produce their gas from the raw fuel that they can buy in the open market; transportation agencies, like railroads or street railways, can easily create the motive source of their service; water utilities have their water supply constantly replenished by nature; intelligence transmission utilities like the telephone and telegraph, can easily create the primary source of their service. However, the natural gas industry is alone in depending entirely on the caprice of nature for first the finding, and secondly the continuity of the supply of its primary source of public utility service."

As to peak load demands on natural gas companies, that is, the high demands during periods of extreme cold weather, the 294/40 Smithsonian Institute, on pages 35 to 37, says:

"Abnormal peaks of very short duration are characteristic of all natural gas loads for domestic consumers. This necessitates a large property value for equipment that is actually used only a very short period out of each year. Every natural gas company must have considerable equipment that will be used not over four hours daily during say 30 of the coldest days of a year of normal temperature. The smallness of this is evident from the following:

Total number hours in the year $24 \times 365 = 8,760 = 100$ per cent.

Hours peak load equipment is actually used $4 \times 30 = 120 = 1.4$ per cent.

"Industrial loads ordinarily are very much more uniform than domestic loads. This is especially true of the carbon black industry in the field, where the load can be made uniform every day of the year. The relationship between maximum, minimum, and average load conditions is shown on page 37.

"An increase of volume of business can decrease the cost of production only when the increment of increase is distributed so as to make possible the more efficient use of existing equipment. When the increment of increase is concentrated so as to require more equipment, as is the case in all peak loads, the cost of production to the unit of service is increased. Therefore, the cost of peak load natural gas service is greater than the cost of normal service. A rate schedule, to be equitable to all consumers of natural gas, must make the consumers who need and create the peak load service, pay a price that will be commensurate with the extra cost of the service they are receiving."

But, although the cost of peak load service is increased and is greater than that of normal service, the Commission proposes to reverse the laws of economics, and retroactively reduce the price. The gas company's investment remains the same, and as the gas grows scarcer the expense of furnishing it is greater. Inasmuch as it can sell less, the laws of economics declare that it must have more for it.

But the Commission says it must have less.

294 41 On page 38 and 39 of this bulletin the Smithsonian Institution says that the peak load demands on a natural gas company are analogous to the strap hanger problem. In that connection it says:

"While it would be possible for a street car company to install and operate enough cars during the peak-load period to give everyone a seat, yet the cost of so doing would make the general service cost much more than the additional advantages would be worth. Since the demand for seats may be four or five times as great during the rush hours as it is in the middle of the day, the only feasible way to deal with this situation is to admit the necessity of a different standard of service for rush and non-rush periods. Since the fare remains constant, it becomes necessary to provide relatively fewer cars, and therefore fewer available seats, for the rush period than for the non-rush travel.

"But for the uniformity of street railway rates, the rush hour passenger might justifiably be charged more than the non-rush passenger. Conversely, it is not unreasonable that he should, paying the same fare, expect to have to put up with a somewhat less comfortable ride at that time. There is certainly little economic ground for an especially reduced fare for this service.

"This is precisely the situation with regard to natural gas pressures during the peak load period, with this further feature, that the natural gas peak load periods cover relatively only a few days of the year, as against the everyday situation on street car traffic. As long as natural gas prices for the higher costing peak load service remain the same, the consumer must therefore expect a lower standard of service during that period."

Laws have undertaken to penalize railroads and street railways for failing to give adequate service during peak load times or times of emergency, and they have been held unconstitutional. It is held that no public service company owes an absolute duty under all circumstances, and that to undertake to require it to perform the impossible, or that which cannot be performed by care and diligence, is to take its property without due process of law. Thus, 294 42 Wyman on Public Service Corporations, sec. 1433, says:

"Statutes may be passed defining further the obligations of those engaged in public employment to serve all that apply in accordance with their requirements. But if these statutes go so far as to impose an absolute liability upon the proprietors to act at all events they ask more than a State can require in view of the Fourteenth Amendment. Thus a statute which made it the unqualified duty of a railroad to furnish cars within a certain number of days after request, has been held unconstitutional by the United States Supreme Court on the ground that it would unjustifiably subject to its penalties a railroad which had reasonable excuses for its failure to act in the particular case. The only way in which the State courts can save a statute of this sort is to say that its general language is to be construed in view of the common law obligation which it re-enforces, which is subject to many excuses recognized as inherent in the obligation."

In this case the Commission denied everything asked for by the complainants. It found every fact in our favor except the bare fact that there was not enough gas, and found that that was not our fault. Yet without an averment that any rebates were due anybody, without any prayer for rebates, without notice to us that requiring rebates was contemplated, it did, not the legislative act of fixing a rule for the future, but the judicial one of requiring us to forego a large proportion of bills which had accrued in the past; and it did that because we had not performed the impossible.

If there is any public service business in which the duty to furnish an adequate supply could not be made absolute, it is that of a natural gas company. Natural gas cannot be created by man, and if the supply is failing, it cannot be adequate. And to require a gas company to supply an adequate quantity when by the exercise of care

and diligence it cannot do so, and to penalize it for not doing so either by fines or rebates on accrued indebtedness, is to take its property without due process of law.

On pages 49 and 50 of the Smithsonian Institute's Bulletin, it is said:

294/43 "A penalty clause providing for a discount when pressures less than 4 ounces are maintained has been suggested as a means of guaranteeing good service. However, instead of guaranteeing service it stimulates waste for the reasons given on page 54. The penalty clause is inequitable and fails to recognize the well known operating characteristics of the mining, transmission, and distribution of natural gas, which, therefore, differentiate this from every other type of public utility service, more particularly by:

"1. Failure to recognize that the heating value of the gas does not decrease proportionately with the decrease in gage pressure.

"2. Failure to recognize that neither the efficiency nor the efficacy of gas decreases proportionately with the decrease in gage pressure.

"3. Failure to recognize that higher efficiencies may be obtained at pressures below 4 ounces than at 4 ounces and above.

"4. By ignoring rate of flow or volume of gas to be delivered and the close relationship that exists between volumetric demands and the constantly changing and uncertain and unpredictable atmospheric temperature changes.

"5. General conservation methods in the field have not been followed in the past; gas has been produced, transmitted, and distributed in a most wasteful manner, which has, therefore, very greatly depleted available supplies, highly desirable for peak-load service.

"6. The uncertain, migratory, and fugitive nature of the gas in the underground reservoirs, where it is entirely beyond the control of the human will, legal process, or contractual relationship, and yet where its expansive properties under the ground must be taken as the initial step for the delivering of service to consumers 200 miles away, obviously makes it evident that considerable leeway must be allowed in service standards."

It is apparent that the Smithsonian Institute had heard of the case.

294/44

Fourth Ground.

The Commission's general order No. 1028 requiring all gas companies to furnish an adequate supply of gas had no relation to rates, and does not suggest any relation to the schedule of rates then or thereafter in force. Said order, insofar as it was valid and constitutional, was merely a statement or declaration of the common law duty of persons in a public business. No order had ever been made by the Commission graduating the rates in accordance with the pressure of the gas.

The Court's decision in this case seems to be predicated upon the idea that the existing schedule of rates for gas in Oklahoma City was graduated according to the pressure at which the gas should be furnished, and that the Commission, in ordering on February 23, 1918, the discounting or relating of the bills for gas used in December, 1917, and January, 1918, was merely applying an existing applicable schedule of rates. This was not the case, and there is nothing in the record or in the Commission's finding or order in this case indicating such a state of facts. The fact is that the schedule of rates for gas in Oklahoma City was made and put into effect upon no basis of pressure, but merely at certain rates per 1,000 cubic feet, and the question of graduating the rate according to pressure was never heard of insofar as this appellant and the Oklahoma Gas & Electric Company were concerned until the Commission, on February 23, 1918, purported to perform the legislative act of making that rule, law or graduated rate, (and that not a general rule, law or rate, but only a special one for that particular time and occasion), and purported at the same time to perform the judicial act of rendering judgment under that rule, law or graduated rate, and giving it a retroactive effect.

The Act of the Legislature approved March 25, 1913, (Session Laws 1913, p. 150), conferred on the Commission general supervision over all public utilities, including gas companies, with power to fix and establish rates. Under that act the Commission, on October 16, 1913, after due publication as required by the Constitution, issued its general order No. 755 (7th Annual Report of Corporation Commission, p. 366) as follows:

"Order No. 755,

Cause No. 1834.

Proposed Order No. 134.

To All Persons, Firms or Corporations engaged in the business of transporting, distributing or selling natural gas; or manufacturing, distributing or selling artificial gas; or generating, distributing or selling electric current; or supplying, distributing or selling water to consumers within the State of Oklahoma, and to all whom it may concern:

"Pursuant to publication of Proposed Order No. 134 in the Daily Oklahoman, a newspaper of general circulation in the State of Oklahoma, and County of Oklahoma, for four consecutive weeks; and, pursuant to a hearing had thereon in the office of the Corporation Commission in Oklahoma City, Oklahoma, on the 14th day of October, 1913, at which hearing only the Public Service Company of Oklahoma, by Mr. Fred W. Insull, was represented, who stated that said company had no objections to the entering of a final order to conform substantially to the requirements of the proposed order herein, and at which hearing it was apparent that no person, firm or corpo-

ration which would be affected by the requirements of such an order desired to interpose any objections to the promulgation of the final order;

It is, therefore, ordered that each and every person, firm, association or corporation engaged in the business of transporting, distributing or selling natural gas; or manufacturing, distributing, or selling artificial gas; or generating, transmitting, distributing or selling electric current for heat, light or power; or pumping, supplying, distributing or selling water for commercial, domestic, municipal power or irrigation purposes, to consumers within the State of Oklahoma shall file with the Corporation Commission of Oklahoma on or before the first day of December, 1913, a certified copy of their respective rate sheets, schedules and tariffs, of each form of application for service and each form of contract in effect on the first day of August, 1913, pertaining to the transportation, transmission, distribution, pumping, furnishing, supplying or sale of gas, electricity or water.

294 46 "It is further ordered that no such persons, firms, associations or corporations shall, for any utility which they may represent, advance any rate or change the form or form of applications or contracts in effect on this date without first having submitted such proposed rate or form to the Corporation Commission at least thirty (30) days prior to the proposed effective date thereof; and the same shall not become effective unless and until approved by the Corporation Commission.

"This order shall be in full force and effect on and after the 15th day of November, 1913, a date subsequent to four successive weekly publications in the said Daily Oklahoman.

"Dated at Oklahoma City, this 16th day of October, 1913."

Pursuant to that order a certified copy of the joint rates of the appellant and the Oklahoma Gas & Electric Company were filed with the Commission on the 15th day of September, 1915, a copy of which duly certified by the Commission has by leave of the court been filed herein as a part of the record in this case. The said schedule of rates so filed was as follows:

"H. M. Byllesby & Company,

Oklahoma Gas and Electric Company,

Statement Relative to Natural Gas.

"The Oklahoma Gas & Electric Company distributes gas to consumers as the agent of the Oklahoma Natural Gas Company.

"The Oklahoma Gas & Electric Co. does not own the supply of natural gas, nor the pipe line conveying gas to Oklahoma City from the gas field.

"Natural gas is supplied all customers under written contract between the customer and the Oklahoma Natural Gas Company, (not the Oklahoma Gas & Electric Co.), the latter company signing such contracts as the agent of the former.

"The form of contract referred to above sets forth clearly all of the rules and regulations under which natural gas is supplied. Customers are urgently requested to familiarize themselves with the terms of their contracts, a copy of which will be furnished upon application.

"H. M. Byllesby & Company.

Oklahoma Gas and Electric Company.

Natural Gas Rates.

25c. net or 30c. gross per cu. ft. for the first 200,000 cu. ft. used per month.

16c. net or 21c. gross per 1,000 cu. ft. for the next 300,000 cu. ft. used per month.

11c. net or 13¹/₂c. gross per 1,000 cu. ft. for the next 1,000,000 cu. ft. used per month.

10c. net or 12¹/₂c. gross per 1,000 cu. ft. for all used in excess of 1,500,000 cu. ft. per month.

Discount:

The difference between the gross and the net constitutes a discount for prompt payment which will be allowed if payment is made within ten days from date of rendering bill.

Minimum Monthly Bill:

\$1.00 net per month or if used for gas engine service \$1.00 per month for the first horsepower of gas engine capacity served and 50c. per horsepower or fraction thereof, of additional gas engine capacity."

These became the legal and established rates until the Commission, on a hearing, and usually an appraisal of the property used and useful in performing the service, should reduce or increase the same, which increase or reduction would be only prospective and not retroactive in its effect. Nothing of that kind had occurred with respect to the rates for gas in Oklahoma City up to the time of the Commission's order of February 23, 1918, requiring the discounting of these past bills; and the rates in effect in December, 1917, and January, 1918, were the identical rates contained in the foregoing schedule. They were not graduated according to pressure, but were based solely on meter readings.

In addition to that, the Act of the Legislature approved April 28, 1913, (Session Laws 1913, p. 309), required all persons or corporations furnishing gas in municipalities in the State to the inhabitants thereof to "do so through standard meters at meter rates," and it made a violation of the act a misdemeanor. The evidence in this case shows, and everybody conversant with the gas business knows, that meters register only volume and

do not register pressure; and the Legislature, in requiring gas to be furnished only through standard meters and at meter rates, made the standard meter the measure of the gas used and the rate a volumetric rate. Inasmuch as the Legislature is the sole source of the Commission's power and jurisdiction over public utilities, we doubt the authority of the Commission, in the face of that act, to make an order even prospective in its operation requiring discounts for low gage pressure. It is probable that it could have made an order requiring certain pressures to be maintained, giving it a prospective operation, and where the order was violated without just cause or legal excuse, have fined the offending company as provided in the Constitution; but in the face of that act, it has no power to convert a meter rate, a rate according to volume, into a gage pressure rate.

But whatever the Commission's power in that respect it is nevertheless certain that, until the retroactive order of February 23, 1918, no attempt to do so in Oklahoma City had ever been made. And it had never been done anywhere in the State except in the case of the Nowata County Gas Company in which a similar order was made just a day or two before the order was issued in this case. That, however, was not a general order, but was one directed only against the Nowata County Gas Company by name, and was only applicable to that particular time and occasion; and neither this appellant nor the Oklahoma Gas & Electric Company was a party to that proceeding. At the time this order was made, therefore, there was no law or order in effect graduating the rate according to the pressure. On the contrary, there was an express act of the Legislature requiring the rate to be based on the volume registered by a standard meter.

The Commission's general order No. 1028, requiring all gas companies to furnish an adequate supply of gas does not affect 294 / 49 the question. This rebating order cannot be affirmed unless it would have been affirmed if the Commission had never issued general order No. 1028. That order adds nothing to what was already the law. It was as much the legal duty before that order was made as it was afterwards for one in the business of furnishing gas to the public to construct, equip and maintain adequate pipe lines, mains and distributing systems for serving the public. That was a common law duty. Also, before the order was made as much as afterwards, it was the duty of one in the business of furnishing to the public natural gas, a commodity which cannot be manufactured, and the supply of which has natural limitations, to exercise all reasonable care and diligence to furnish an adequate supply. That far the order added nothing to what was already the law. That far it created no duty. It was merely declaratory of a well recognized existing duty. And insofar as the order undertook to require more and to make the duty absolute, to require that which was practically if not absolutely impossible, if that is its proper construction, it was void. And to undertake to enforce it as an absolute duty when by diligence and care it could not be performed, would be to take appellant's property without due process of law in violation of the Fourteenth Amendment. The Commission expressly found that the appellant was not negligent, that it had exercised all

reasonable care and diligence, and that the charge of negligence was unfounded and unreasonable.

If, then, general order No. 1028, insofar as it was valid, added nothing to what was already the law, how could it be the basis of this court's decision? Would this court have affirmed the rebating order if general order No. 1028 had not existed? This court based its decision upon it. Would this court, without order No. 1028, have affirmed the Commission's order providing that, because the appellant, though free from negligence, was unable to furnish its patrons all the gas they wanted and needed, the patrons need not pay for all they did get and use? Would this court have so held because of the common law obligation of the appellant to furnish its patrons an adequate supply in so far as it was reasonably possible to do so?

294 50 Furthermore, general order No. 1028 had no relation to rates. Who on reading that order would consider that it concealed a rebate? It does not mention rates or suggest a graduated schedule, or indeed any schedule. It contains not the slightest intimation that the matter of rates was in the Commission's mind when it made it. That order cannot ex post facto be tied to the rate schedule.

It is the legal duty of telephone companies, telegraph companies, and railroad and street railway companies to furnish adequate and efficient service to their patrons; and, inasmuch as they render a service pure and simple, and do not deal in a commodity the supply of which has natural limitations, as does a natural gas company, their duty and obligation is more nearly absolute than is that of a natural gas company. But acts penalizing railroads and street railways for not furnishing cars when it was not reasonably possible to do so, and for not furnishing seats to passengers during peak load periods, have been held unconstitutional.

Suppose a telephone company, without negligence on its part, as the commission found this appellant was not negligent, should be unable to get a long distance call through for a patron as early as he desired, or within such time as would enable him to reap the same benefit therefrom that he would have reaped could he have talked earlier; if the patron nevertheless talks over the telephone when the call is put through, would he be excused from paying the full tariff therefor because the conversation would have been of more benefit to him had it not been delayed? And would a retroactive order requiring a discount of that bill be valid?

A man whose time is worth a dollar an hour starts from his home to his office. He stands at the street crossing and waits for a street car. Something has gone wrong, for three cars pass going in the opposite direction, and it is 45 minutes before one comes going in his direction, whereas, according to the schedule, one is due every 15 minutes. The man has lost 30 minutes, which means 50 cents to him. He has not had good service. When the car

294 51 comes, however, he boards it and rides to his office. Had he refused to pay the conductor full fare, and had he been put off on that account, and had he sued the company for damages,

could he have recovered on the ground that the service rendered was not worth full fare? If order No. 1028 had been in effect, would he have had any better standing to recover? If he had walked to town, would he have been entitled to ride free next time because he had not had good service on that occasion?

The opinion of the court overlooks the vital fact that the bills required to be discounted were incurred under the established and existing schedule of rates on file with the Commission; that said rates were based upon meter readings, and under the statutes of this state were required to be so; that the question of pressure did not enter into them; that there was no franchise provision requiring gas to be furnished at any given pressure, there was no statute so requiring, there was no rule or order of the Commission so requiring, and there was no franchise or statutory provision or order of the Commission graduating the rate according to the pressure or intimating such a thing; and, as the Commission found and held, the averment of negligence made against the appellant in the performance of its public duty was "unfounded and unreasonable." The complaints filed did not allege that the rates in effect were unjust or excessive; they did not even seek a rebate or discount, as they did in the Nowata case; and this appellant did not know until the Commission made the order that a rebate or discount was contemplated. And the rebate granted was out of all proportion to the quantity and heating value of the gas furnished, and was arbitrary and unreasonable.

Fifth, Sixth and Ninth Grounds.

The Commission's order requiring the rebating of accrued bills was not an order regulating rates, but was an order depriving the appellant of indebtedness which had accrued to it under an existing established rate. The proceeding was not legislative, but judicial, and required proper parties, proper pleadings, proper notice, and evidence warranting the judgment, none of which existed here.

In its opinion in this case the court misconceived the nature of the proceeding before the Commission, and held it to be legislative, whereas in fact it was judicial. Thus, in its opinion, the court said:

"Since the order of the Commission is merely an order adjusting rates in accordance with the schedule of rates prescribed for adequate service, this court is not called upon to determine the matter judicially."

Again the court in its opinion said:

"The power of the Corporation Commission to regulate rates and practices of gas utilities under this act is supreme, subject only to limitations imposed by the Legislature."

Again this court said:

"There is no evidence in the record to indicate that the discounts required reduce the revenues of the appellant to a point where it failed to receive an adequate return on the investment legally employed in the business of furnishing natural gas service."

And in the 4th syllabus the court said:

"In the exercise of its peculiar jurisdiction as a legislative body, in reviewing the order of the Corporation Commission adjusting rates in accordance with the schedule of natural gas rates prescribed for adequate service, the duty of this court is marked out in the Constitution, and that is, to determine whether or not such order appealed from was reasonable, just and correct, supported by the *prima facie* presumption in favor of the action of the Commission, that it is reasonable and just. Unless the rate established by the Commission is clearly oppressive on the one hand or confiscatory on the other, no judicial question is presented."

This being an appeal from the Commission, it follows that the nature of the proceeding is the same here that it was there; 294 53 and if the Commission's order was judicial in character instead of legislative, then of course this court's statement that it "is not called upon to determine the matter judicially," must be erroneous.

There can be no question but that the proceeding before the Commission, and the very order which it made, was judicial in character. It is true that making or prescribing rates to be charged for a public service is a legislative act, whether made or prescribed by the Legislature or by a board or commission exercising delegated legislative power; but the determination of what is due under a rate is judicial. Moreover, a law or order prescribing rates cannot be enacted retroactively. Retroactive laws changing the procedure or validating that which is not void but merely defective or voidable, may be valid. But a retroactive law changing an established existing rate, and making it apply to bills or indebtedness already incurred thereunder, divests one of property rights, constitutes a deprivation of property without due process of law, and therein violates the Fourteenth Amendment. This court in the second syllabus to its opinion said that "the Commission is vested with authority to make all valid and lawful orders prescribing rates which the State, in the exercise of its sovereign capacity could prescribe or make." That may be true; but the legislature itself cannot enact a law making rates retroactively and requiring a public utility to forego indebtednesses which have accrued to it under previously existing rates.

In *Prentiss et al. v. Constituting the State Corporation Commission of Virginia, v. Atlantic Coast Line Company*, 211 U. S. 210, which involved an order of the Corporation Commission of Virginia fixing railway rates, the Supreme Court of the United States said:

"But we think it equally plain that the proceedings drawn in question here are legislative in their nature, and none the less so that

they have taken place with a body which at another moment, or in its principal or dominant aspect, is a court such as is meant by section 720. A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end.

294 54 Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative, not judicial in kind, as seems to be fully recognized by the Supreme Court of Appeals, *Commonwealth v. Atlantic Coast Line Ry. Co.*, 106 Virginia, 61, 64, and especially by its learned President in his pointed remarks in *Winchester and Strasburg R. R. Co. and others v. Commonwealth*, 106 Virginia, 264, 281."

The order here under review did not prescribe a rate for the future. It was not even a general order so as to have a continuous operation, but was restricted in its effect to that particular time and occasion. Further on, in *Prenitts v. Atlantic Coast Line Company* the Supreme Court of the United States said, "Litigation cannot arise until the moment of legislation is past."

And the Constitution of Oklahoma contemplates and provides that orders of the Commission fixing rates shall be only prospective in their operation. Thus, in sec. 18, art. 9, it is provided:

"* * * The Commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities, and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules, regulations, and requirements, the Commission may, from time to time alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void."

This provision itself contemplates orders fixing rates only prospectively. Moreover, by that provision the Commission was authorized to prescribe rates only, "in the manner hereinafter authorized." That manner is set forth in a succeeding portion of section 18, article 9, as follows:

294 55 "Before the Commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation, or requirement, shall first be given, by the Commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall

be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before said Commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation, or requirement shall first be published in substance, not less than once a week, for four consecutive weeks, in one or more of the newspapers of general circulation published in the county in which the Capitol of this State may be located, together with the notice of the time and place, when and where the Commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement, made by the Commission, shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, so long as it remains in force, be published in each subsequent annual report of the commission."

Section 20, article 9, authorizes an appeal from an order prescribing rates, and section 21 provides as follows:

"Upon the granting of an appeal, a writ of supersedeas may be awarded by the Supreme Court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the Supreme Court, no action of the Commission prescribing or affecting the rates, charges, or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceeding resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approved, on review, by the Supreme Court), payable to the State, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the Court on appeal. The Commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any supersedeas), of the order or requirement appealed from, to keep such accounts, and to make to the Commission, from time to time such report, verified by oath, as may, in the judgment of the Commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the Commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company, pending the appeal, be not sustained on such appeal; and the Commission shall also, from time to time, require

such company, under like penalty, to give additional security on, or to increase the said suspending bond, whenever, in the opinion of the Commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner and through such methods of distribution as may be prescribed by the Commission, or by law."

It will be observed that this provision relates to appeals by the utility from orders reducing rates, and provides for suspending the order pending the determination of the appeal by giving a bond conditioned for the refunding of all charges which the utility may collect pending the appeal in excess of those fixed. In other words, the order of the Commission fixing rates is not retroactive, and only those charges which accrue after the order is made are to be refunded if the order is affirmed. Section 23 is as follows:

"Whenever the court, upon appeal, shall reverse an order of the Commission affecting the rates, charges, or the classification-
 294 57 tions of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such orders as, in its opinion, the Commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the Commission at the time the original order appealed from was entered. The right of the Commission to prescribe and enforce rates, charges, classifications, rules and regulations affecting any or all actions of the Commission theretofore entered by it, and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the Commission, prescribing or altering such rates, charges, classifications, rules, or regulations, shall be retroactive."

We think, therefore, that no one can say that our Constitution contemplates that the Commission may make a retroactive order fixing rates, or require a natural gas company free from negligence to forego what has accrued to it under an existing rate because it was not able to furnish all the gas its patrons wanted or needed.

The Commission therefore was not acting legislatively; it was not making a rate; but it was undertaking to prescribe what portion of an accrued indebtedness the debtors should pay. Its order was in the nature of a judgment in a judicial proceeding awarding a set-off or counter-claim. If it was acting legislatively at all, then the legislative portion of the act consisted in prescribing the ex post facto graduated rate at the same time that it did the judicial act of rendering a judgment on that ex post facto law, applying the law then made to a past state of facts.

But even if the Commission was acting legislatively, and was

fixing rates, still the order violated the due process clause of the Fourteenth Amendment. It violated the Fourteenth Amendment, not only because it made the rate retroactive, but because it made a rate without application therefor on the part of anybody, and without notice to the appellant, either by the process served on 294 58 it or by the pleadings filed against it, that such action was contemplated; because the appellant had neither knowledge, notice nor means of knowing, and did not know, until the order was actually made, that such an order was contemplated; because the appellant, having no notice, had no opportunity to challenge the justice and propriety of the order, no opportunity to introduce evidence showing the unfairness and confiscatory character of the order; in short, because it was denied a hearing in determining the propriety of the rates fixed. And since, on appeal to this court no new evidence may be received, but only a review of the record made before the Commission may be had, and since no other court can interfere with the Commission's order, the result has been the absolute denial to the appellant of a hearing on the reasonableness of the rates made, a denial of any opportunity to introduce evidence thereon either before the Commission or before the court. And we now have an order fixing unjust, unreasonable and confiscatory rates, made without a hearing on that question and without notice to the appellant, which order this court has affirmed, and which, under the Constitution, no other court in the State has power to review, reverse, correct, annul, suspend or delay. Now, that proceeding was either authorized by the law of Oklahoma, or it was not. If it was not authorized by the law of Oklahoma, then it was void for lack of legal authority. If it was authorized by the law of Oklahoma, then that law and the acts done under it violate the Fourteenth Amendment, and are void. Thus, in *Chicago, Milwaukee & St. Paul Railway Company v. Minnesota*, 134 U. S. 418, it is said in the syllabus:

"The act of the legislature of Minnesota, approved March 7, 1887, General Laws of 1887, c. 10, establishing a railroad and warehouse commission, being interpreted by the Supreme Court of that State as providing that the rates of charges for the transportation of property, recommended and published by the commission shall be final and conclusive as to what are equal and reasonable charges, and that there can be no judicial inquiry as to the reasonableness of such rates, and a railroad company, in answer to an application for a mandamus, contending that such rates, in regard to it, are 294 59 unreasonable, and not being allowed by the state court to put in testimony on the question of the reasonableness of such rates; Held, that the act is in conflict with the Constitution of the United States, as depriving the company of its property without due process of law, and depriving it of the equal protection of the laws."

Here the appellant had no notice of any intention to fix rates and therefore no opportunity to introduce evidence as to rates either before the Commission or this court. The order made and affirmed by

this court is final and conclusive. All other State courts are forbidden to review, reverse or annul it. The Constitution (sec. 18, art. 1) declares that all rates except those prescribed by the Commission "shall be unlawful and void," and subjects the offending company to a fine of \$500.00 for each and every violation of the order. In other words, we are required under enormous penalties to conform to a rate order upon which we are denied the right to be heard.

In *State of Washington ex rel. Oregon Railroad & Navigation Co. v. State Railroad Commissioners*, 224 U. S. 510, the Supreme Court of the United States said:

"The Commission's order requiring the Oregon Company to make track connection was not a mere administrative regulation, but it was a taking of property, since it compelled the defendant to expend money and prevented it from using for other purposes the land on which the tracks were to be laid. Its validity could not be sustained merely because of the fact that the carrier had been given an opportunity to be heard, but was to be tested by considering whether, in view of all the facts, the taking was arbitrary and unreasonable or was justified by the public necessities which the carrier could lawfully be compelled to meet. For the guaranty of the Constitution extends to the protection of fundamental rights—to the substance of the order as well as to the notice and hearing which precede it. 'The mere form of the proceeding instituted against the owner, even if he be admitted to defend, cannot convert the process used into due process of law, if the necessary result be to deprive him of his property without compensation.' *Chicago Etc. Ry. v. Chicago*, 166 U. S. 226, 236; *Missouri Pacific Ry. v. Nebraska*, 164 U. S. 403, 416. So that where the taking is under an administrative regulation the defendant must not be denied the right to show that as a matter of law the order was so arbitrary, unjust or unreasonable as to amount to a deprivation of property in violation of the Fourteenth Amendment. *Chicago Etc. R. R. v. Minnesota*, 134 U. S. 418; *Smyth v. Ames*, 169 U. S. 466; *Chicago Etc. R. R. v. Tompkins*, 176 U. S. 167, 173."

"This was recognized by the Supreme Court of the State, which was held that this constitutional right was not denied, but that the statute furnished, first, an adequate opportunity to be heard before the Commission, and then provided for a judicial review by authorizing the company to test the validity of the order in the Superior Court. Both of these rulings are assigned as error by the Oregon Company. It complains that the statute did not afford it the means of making a defense before the Commission and yet required it to attack the reasonableness of the order on such evidence as it might have been able to produce before the administrative body. If this were true the defendant's position would be correct, for the hearing which must precede the taking of property is not a mere form. The carrier must have the right to secure and present evidence material to the issue under investigation. It must be given the opportunity by proof and argument to controvert the claim asserted against it before a tribunal bound not only to listen but to give legal effect to

what has been established. But, as construed by the state court, all these rights were amply secured by the statute, which declared that the Commission, "after a full hearing," might require track connection. On such investigation the company could have objected to the sufficiency of the complaint and obtained an order requiring it to be made more specific as to the exact location of the proposed tracks. The defendant was given the benefit of compulsory process to secure and present evidence in its behalf. There was a provision to require the attendance of witnesses, the production of documents and for the taking of testimony by deposition. It also had the right to cross-examine witnesses produced on the part of the Commission and the privilege of offering evidence on every matter material to the investigation.

"The defendant insists, however, no matter how complete the right to be heard before the Commission, the statute having denied all other opportunity for testing the validity of the order in the state courts, furnished an utterly inadequate judicial review because, as the carrier could not anticipate what decision would be made, it was unjust to require it to produce evidence, to show in advance the unreasonableness of an order the terms of which were not known. From this it argues that the statute was unconstitutional in so far as it prevented the court from receiving competent and non-cumulative testimony tending to prove that there was no public necessity for making the track connection and that the order was void.

"This position would be true if the defendant had not been put on notice as to what order was asked for and then given ample opportunity to show that it would be unjust or unreasonable to grant it. In this case, and under the statute, it was given such notice. The complaint alleged that some of the towns were important shipping points and that at all of them there was a public necessity that the roads should be connected. The defendant denied each of these allegations. The hearing, both on the law and the facts, was necessarily limited to that issue. There could have been no valid order which was broader than that claim."

But here the order was broader than the claim made. The order made was not the order asked for. The defendant was not put on notice that rebates were contemplated. The result is that it has never had an opportunity to defend against the rebates. Viewing the order as legislative in character, therefore it is still void.

Viewing the proceeding as judicial in character, it is the more certainly void. For the requirement of notice and an opportunity to defend is even more vital and sacred in judicial proceedings than in any other. It was void also because there was no law or order graduating the rate in accordance with the pressure, and the order made or judgment rendered was made and rendered at the same time the law was passed upon which it was predicated. The legislation and litigation were contemporaneous, and were applied to a state of facts antedating both. The order graduating the rate was a mere rescript

of decree made for the occasion upon which to base the judgment the Commission desired to render.

In *Warren Mfg. Co. v. Aetna Ins. Co.*, 2 Paine 501, Fed. Cas. No. 17206, Justice Thompson of the Supreme Court of the United States, sitting as Circuit Justice, said:

"A retroactive statute partakes in its character of the mischief of an ex post facto law, and when applied to contracts or property would be equally unjust and unsound in principle as ex post facto laws when applied to crimes and penalties."

Cooley's *Constitutional Limitations*, 6th Ed., p. 432, discussing what constitutes due process of law, says:

"When the law of the land is spoken of, undoubtedly a pre-existing rule of conduct is intended, not an ex post facto rescript or decree made for the occasion. The design is to exclude arbitrary power from every branch of the government; and there would be no exclusion if such rescripts or decrees were to take effect in the form of a statute."

Rebates can be awarded on past bills provided they are merely made to conform to the rates existing at the time the bills were incurred. If the rate was 25 cents per thousand, and through error or oversight or intentional wrong-doing the gas company should bill a patron for gas at 35 cents per thousand, the Commission would have power to require that the bill be rebated to the legal and established charge. If a railroad has one tariff for lumber and a cheaper one for logs, and a shipper of cross-ties is charged the lumber rate when the ties properly come under the log rate, the railway company can be required to rebate him for the difference. But we have no such case here. Here the Commission made an ex post facto order requiring the appellant to forego a portion of the indebtedness which had accrued to it for gas actually furnished at an existing rate, not because the consumers did not get and use the exact amount charged for, but because they could not be furnished all they wanted. If one goes to a coal dealer to purchase three tons of coal, and the dealer can let him have only one, by the Commission's process of reasoning the purchaser need not pay for the one ton because the dealer could not furnish him three. An indebtedness incurred, even to a gas company, cannot be annulled in that way.

294/63 In *Charlesworth v. Omro Electric Light Co.*, P. U. R. 1915 B, 1, the Wisconsin Railroad Commission said:

"The petitioners request that the respondent be required to refund to the consumers any and all moneys collected from them in excess of a reasonable charge for service heretofore furnished. It has not been shown, nor do we find, that the rates on file with the Commission are not the respondent's lawful rates. The petitioners make no claim that the respondent's charges are not in accord with the schedules on file, but appear to rest their claim for refund upon a difference between actual and reasonable charges. Even if the Commission should now find that the respondent's rates are excessive for

the service which it renders, the Commission's order would be incompetent to grant to the petitioners any refund on account of past services. Since the Commission's order as to rates can deal only with future charges, that portion of the petition which relates to refunds must be dismissed.

In *Taylor v. Northwest Light & Water Co.*, P. U. R. 1916 A, 372, 296, the Idaho Public Utilities Commission said:

"The Sunset Brewing Company, intervener, claims a discrimination between the rates accorded it and other power users, particularly the Coeur d'Alene Hardware Company. The evidence discloses the fact that these power users are now, and for some time past have been, furnished electric energy under and by virtue of special contracts that had been in effect for a long time prior to the passage of the law (the Public Utilities act). The rate furnished the Coeur d'Alene Hardware Company is lower than that given the intervener, but the defendant company attempts to explain that apparent discrimination on the ground of difference in load factor and the particular hours of use during the day. This electric energy having been furnished to these power users under and by virtue of special contracts entered into prior to the enactment of the Public Utilities act, the same would continue in full force and effect (unless canceled or annulled by agreement of the parties themselves) until proper proceedings were instituted before this Commission for the annulling of the same. Neither of the parties to a contract of this kind can legally cancel or annul the same. Relief can be obtained only by proper application to this Commission, and proper proceedings had. *Re Murray*, 2 C. R. C. R. 464; *Stanislaus County v. San Joaquin & K. River Canal Co.*, 192 U. S. 202, 48 L. ed. 406, 24 Sup. Ct. Rep. 241.

"No application having been made to this Commission for relief, prior to the intervention in this proceeding, the Commission has no authority to order a reparation for any overcharges arising by virtue of said contract. This Commission finds that all special contracts for electric energy at a rate different from that herein prescribed should be canceled and annulled."

In *Model Laundry Co. v. East St. Louis & Interurban Water Co.*, P. U. R. 1918 D, 132, 137, the Illinois Public Utilities Commission said:

"The petitioner asks for reparation covering the difference in charges between the 250,000 gallon rate and the manufacturers' rate."

"Section 72 of the Public Utilities Act provides:

"When complaint has been made to the Commission concerning any rate or other charge of any public utility and the Commission has found, after a hearing, that the public utility has charged an excessive or unjustly discriminatory amount for its product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest at

the legal rate from date of payment of such excessive or unjustly discriminatory amount.' (Laws 1913, p. 497.)

"In a case before the Wisconsin Railroad Commission, *Charlesworth v. Oniro Electric Light Co.*, P. U. R. 1915 B. 1, the petitioner requested that the respondent be required to refund all moneys collected in excess of a reasonable charge for the services furnished. In this case the Commission held:

"The petitioners request that the respondent be required to refund to the consumers any and all moneys collected from them in excess of a reasonable charge for service heretofore furnished. It has not been shown, nor do we find, that the rates on file with the Commission are not the respondent's lawful rates. The petitioners make no claim that the respondent's charges are not in accord with the schedules on file, but appear to rest their claim for refund upon a difference between actual and reasonable charges. Even if the

294 65 Commission should now find that the respondent's rates are excessive for the service which it renders, the Commission's order would be incompetent to grant to the petitioners any refund on account of past services. Since the Commission's orders as to rates can deal only with future charges, that portion of the petition which relates to refunds must be dismissed."

"In the case under consideration there is no evidence to show that the petitioner was charged with a rate other than the established rates on file, which must be considered the lawful rate until the Commission finds otherwise. The Commission will therefore hold that as to past services the petitioner is not entitled to reparation."

If the Commission's order can be sustained, then one consumer can file a complaint alleging that the service was not good at any time during 1918 and 1919, or that the rates were too high, and the Commission could order the gas company at the instance of that one consumer to rebate every consumer in the city.

The order was void, not only because it was retroactive, but also because it was arbitrary and unreasonable, and was made without evidence warranting it, and the rebates awarded were wholly and grossly disproportionate to the quantity and heating value of the gas furnished.

All the authorities concur that gas between one ounce and one-tenth of an ounce pressure has a usable value. The Smithsonian Institute and the Bureau of Mines both say that meals can be cooked with gas at two-tenths of an ounce pressure. The only difference between the quantity and heating value of gas at half ounce pressure and four ounces pressure is just one and a half per cent, or 15 cubic feet in the thousand. Yet the Commission's order provided that any gas used below one ounce pressure, it makes no difference how large the quantity, need not be paid for at all. In other words, the Commission absolutely, plainly and confessedly confiscates appellant's gas when the pressure was below an ounce. Whether

294 66 the order be legislative or judicial, no notice, no form of hearing, no evidence, can justify it or make it due process of law.

Eighth Ground.

The order of the Commission is arbitrary and unreasonable, and operates to deprive appellant of its property without due process of law in violation of the Fourteenth Amendment, because the particular facts with respect to individual consumers are not taken into consideration, but each and every consumer residing in the district in which the low pressure existed during any given period is awarded the discount on his bill for that month, even though during the period of low pressure he was using coal, oil or wood, and even though the whole amount of gas which he consumed was consumed during the period of normal pressure.

The Commission's order is based upon the pressure at the regulator station in each regulator district in the city. For example, if during 15 days of the month, the pressure was four ounces or better, it counts that normal service. If during the remaining 15 days the pressure was two ounces, it counts that one-half service. It then averages those and says that the service during the month was three-fourths efficient, and it requires that the bill for the entire month of each and every consumer living in that district be rebated 25 per cent. It made no inquiry as to the real facts as to each consumer, but every consumer in that district is awarded that rebate on the month's bill.

We had a hearing before the Commission a few days ago in regard to discounting the bills in Oklahoma City during a recent period of low pressure. There we were cited to appear and show cause why the Commission should not require us to make rebates. We had notice of its contemplated action this time, and we had an opportunity to defend, whereas in the case now before the court we did not. Two of the proposed rebating districts included the entire business part of the city. We proved that when the period of low pressure came, the gas company requisitioned the business portion of the city to discontinue the use of gas, as that section had coal and oil for fuel, and that 95 per cent of the gas used in those districts during the month was used during the period of normal pressure. We also proved that, in certain residence sections of the city proposed to be rebated, from 5 to 25 per cent of the consumers were provided with coal, oil or wood, and did not use gas during the period of low pressure, so that the whole of their bills were incurred in using gas only at a pressure of four ounces or better. To rebate those bills would be to rebate bills incurred during the period of normal pressure.

But that is exactly what the Commission does in the order now before the court. It makes the discount by districts, and every consumer in the district is awarded the discount provided for that district, even though he was not burning gas during the period of low pressure, but was burning it only when the pressure was high; even though during that period he was using some other fuel altogether or was even away from home. Not only did the Commission, in the proceeding now under review, not inquire into that matter, not only

did it have no evidence relating to it and made no finding in that respect, but inasmuch as we had no notice that any rebates were contemplated, we had no opportunity ourselves to show the individual conditions, and must therefore rebate everybody in the districts named, whether in fact their bills were incurred at low pressure or not.

The proceeding was judicial in character. That required parties, actores, real parties with real grievances, to be determined upon the facts respecting each party. Due process of law requires that. We cannot, consistently with due process of law, be required to rebate any consumer to whom under the facts no rebate is due. And any proceeding in which the Commission orders a rebate, and yet fails to inquire and find what the actual facts are with respect to each consumer to whom the award is made, is a denial of due process

294 68 of law. As we said, the proceeding was judicial. Suppose the action had been brought in a court, if three parties had sued, as they did here, could the court have done anything more than award relief to the parties who did sue? And would they not have had to allege and prove their case? Is it due process of law to adjudge that because A is entitled to a rebate one must also be given B, without regard to the facts with respect to B? The order is arbitrary and unreasonable in that respect. It is arbitrary to award a rebate to any person until it is shown that he is entitled to a rebate.

If it should be said that the presumption is that all persons living in those districts were entitled to the same rebates, and that the burden was upon us to show that they were not, which is not the law, nevertheless due process of law requiring that we have notice of the contemplated action and an opportunity to make that showing, and we did not have it.

The appellant therefore prays that the court will grant a rehearing herein, and that it will reverse and set aside the Commission's said order.

AMES, CHAMBERS, LOWE & RICHARDSON,

Attorneys for Appellant.

295 And thereafter, to wit, on the 30th day of March, 1920, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, February Term, 1920, March 30th, 1920, Twelfth Judicial Day.

9854.

OKLAHOMA NATURAL GAS CO., Appellant,

vs.

STATE OF OKLAHOMA et al., Appellees.

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be, and the same is hereby denied.

296 In the Supreme Court of the State of Oklahoma.

I, Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 295 pages, numbered from 1 to 295 inclusive, is a true and complete transcript of the record and all proceedings in said Supreme Court in the case of Oklahoma Natural Gas Company, a corporation, Appellant, vs. The State of Oklahoma, et al., Appellees, Number 9854, as the same remains upon the files and records of said Supreme Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Oklahoma City, Oklahoma, this the 19th day of April, A. D. 1920.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma,

By _____,
Deputy.

Endorsed on cover: File No. 27,634. Oklahoma Supreme Court, Term No. 312. Oklahoma Natural Gas Company, plaintiff in error, vs. The State of Oklahoma et al. Filed April 27th, 1920. File No. 27,634.

Office Supreme Court, U. S.

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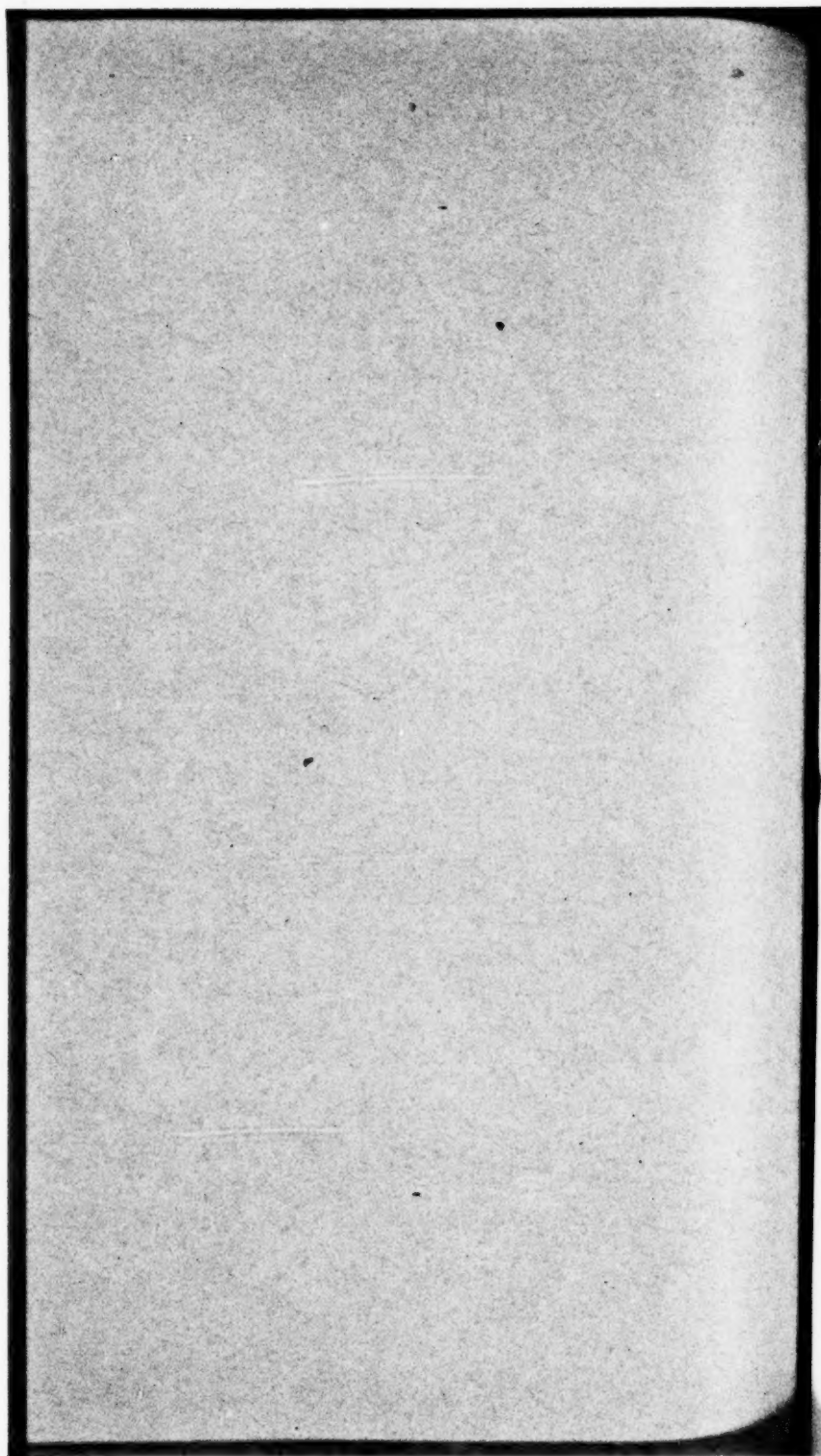
In the
Supreme Court of the United States.
October Term, 1920.

OKLAHOMA NATURAL GAS COMPANY,
Plaintiff in Error,
VERSUS
THE STATE OF OKLAHOMA, ET AL.,
Defendants in Error.

**IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.**

Statement and Brief of Plaintiff in Error

C. B. AMES,
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**AMES, CHAMBERS,
LOWE & RICHARDSON,**
Of Counsel.



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IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1920.

No. 312.

OKLAHOMA NATURAL GAS COMPANY,
Plaintiff in Error,
vs.
THE STATE OF OKLAHOMA, *ET AL.,*
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

STATEMENT AND BRIEF OF PLAINTIFF
IN ERROR.

This is a writ of error to the Supreme Court of Oklahoma to review a judgment rendered by it affirming an order of the Corporation Commission of that State requiring the plaintiff in error to refund to its gas consumers a portion of their bills during the months of December, 1917, and January, 1918, on account of low pressure in its lines.

The question involved is whether the Natural Gas Company can be penalized for failing to supply gas which nature had not produced. It did supply to

its customers the maximum amount which it could procure. The Commission expressly found that it was not negligent in failing to procure more (p. 137). Yet because its customers, for a few days in the year, want to buy more gas than it is *possible* to procure, they are, by this order, excused from paying for what they do buy.

The Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Company were both parties to the proceeding. The Natural Gas Company is a pipe line company engaged in the production, purchase and transportation of gas throughout the State of Oklahoma. The Gas and Electric Company is a local plant owning an electric light plant and natural gas distributing lines within the City of Oklahoma City. The Natural Gas Company transports the gas to the gates of the city where it is delivered into the lines of the Gas and Electric Company which distributes it to the consumers.

The meters are read and the bills collected by the Gas and Electric company, which receives a percentage of the gross collections, paying over the balance to the Natural Gas Company. The Natural Gas Company owns approximately 1000 miles of pipe lines in the State and transports gas not only to Oklahoma City, but to Enid, El Reno, Guthrie, Chandler, Tulsa, Muskogee and a large number of other towns. The gas which it distributes is in part produced by it from wells upon its own lands and leases, and in part is purchased from other producers.

It is obvious that natural gas, being a mineral produced through the ages by the slow processes of nature, cannot be purchased or transported by the company in quantities in excess of the supply which nature has provided. The gas fields of Oklahoma and of the United States are failing rapidly and are not being regenerated by nature. This gas is used in the cities of Oklahoma for cooking, for warming houses and office buildings, and for manufacturing purposes. In the summer there is usually an adequate supply of gas for all these purposes. In the winter, however, the supply is unequal to the demand and preference is given to domestic consumers, gas during the coldest weather being entirely cut off from all manufacturing plants. During the few severely cold days of each winter the supply of gas is insufficient to meet the demands of domestic consumers, and on such occasions, if no substitute fuel is provided by them, the result is inconvenience and discomfort. The heavy demands upon the gas supply commences in the morning when all consumers, approximately at the same time, light the gas in their cooking stoves and furnaces. During the night the gas is packed into the pipe lines, which operate both as a means of transportation and as a storage reservoir so that in the morning before consumption commences the pipe lines at the city gates may carry a pressure of from 200 to 300 pounds, but when all consumers draw upon this supply at once the pressure greatly decreases until it is insufficient to supply

all demands. This is a physical condition common to all gas companies and one which cannot be avoided.

In this situation during the months of December, 1917, and January, 1918, for a few days the supply of gas was inadequate to meet the full requirements of all domestic consumers, and complaints were filed with the Corporation Commission, making various and sundry charges of negligence. The pleadings are very fairly reviewed by the Corporation Commission (pages 123 to 127 of the printed record).

The Corporation Commission's Review of the Pleadings.

"The matter coming on for consideration includes three causes. The issues in each arise out of the alleged failure of the defendants, the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company to have provided and furnished an adequate supply of gas for domestic purposes in Oklahoma City at certain times within the month of December, 1917. The three causes were consolidated to avoid duplication of record, and, the conditions complained of having continued into and through the month of January, 1918, the investigation of the charges has been made to include the months of December, 1917, and January, 1918.

"The complaint in Cause No. 3188, Ruth et al against the two corporations heretofore mentioned, purports to be the complaint of the relators individually, and all other residents of Oklahoma City, individually and collectively who are users of natural gas.

"The complaint alleges that the relators are users of natural gas and are dependent upon it for fuel for domestic and business purposes; that the Oklahoma Gas & Electric Company is a public service corporation, holding a franchise in Oklahoma City for the sale of natural gas, exercising right of eminent domain, enjoying a virtual monopoly in such business, and charged with the duty of supplying such fuel; that the Oklahoma Natural Gas Company is a corporation existing for the purpose of transporting natural gas by pipe lines from the producing fields to Oklahoma City where it is under contract to deliver to the said Oklahoma Gas & Electric Company such fuel for distribution.

"The same complaint alleges that inadequate pipe line facilities are provided, and that the same are not maintained in good condition, as a result of which the furnishing of natural gas has been interrupted and a reasonably adequate supply of natural gas denied to the relators. It is further alleged that such interruptions have occurred at numerous times within the last three years, certain days in December, 1917, being specified.

"The same complaint alleges that the defendant, the Oklahoma Gas & Electric Company, has failed to establish or maintain storage facilities for a reserve supply of natural gas, but that the same are feasible.

"The relators pray that the Oklahoma Natural Gas Company be required to show the amount of gas furnished daily since January 1, 1916, to the Oklahoma Gas & Electric Company; to reveal such intercorporate relationship as may exist between the defendant corporations; to produce the contracts entered into between them

with reference to supplying gas for Oklahoma City; that the Oklahoma Gas & Electric Company be required to show daily consumption of gas in Oklahoma City, the volume necessary to supply Oklahoma City during certain months, to show pressure in ounces necessary to provide adequate service in Oklahoma City, and to provide and maintain gas storage facilities.

"The complaint of T. F. Donnell et al., Cause No. 3192 reiterates the allegations in the complaint already reviewed as to inadequacy of service. It alleges that as a result of such inadequacy the relators were without gas for the preparation of meals; that members of the household of T. F. Donnell contracted colds and illness and were compelled to incur expense for medical service; that by reason of lack of heat great numbers of families were required to purchase stoves and fuel, and others, unable to do so because the same could not be secured, were compelled to go to hotels at great expense and inconvenience; and that many business concerns were compelled to suspend business at great loss, damage and inconvenience to proprietors thereof and to patrons.

"The complaint alleges that the defendant companies at various times during the fall of 1917 assured patrons that an adequate supply of gas had been arranged for and would be available, and that the relators relied upon such assurances. It is alleged that the defendant, Oklahoma Gas & Electric Company, has compelled consumers to pay bills promptly, regardless of the cause for unwillingness of the patrons to do so, and has discontinued gas service on failure to pay promptly, and threatens to discontinue service for all consumers who refuse or decline to

pay such bills, regardless of the defense against such claims. These relators pray that this Commission restrain said defendant company from so forcing collections of such gas bills, pending determining of the issues herein.

"Complaint in Cause No. 3197, Selby et al. against the two corporations above mentioned, alleges that said corporations are in contempt of Corporation Commission Order No. 1028 requiring gas companies to so construct, equip and maintain pipe lines and mains and distributing systems as to be able at all times to furnish and supply at all times an adequate amount of the proper quality for heating, cooking and lighting. This complaint represents that said corporations have failed in all respects to comply with said order, particularly from December 8 to December 13, 1917, inclusive. This complaint makes allegations similar to those already referred to as in the preceding complaints in the matter of danger to public health and interruption to business, alleging that at least one death has occurred on account of such conditions. It contains allegations similar to those in the complaint of Ruth et al. alleging frequent inadequacy of service through a period of years, insufficient construction and maintenance of pipe lines, and failure to provide storage. This complaint alleges that the corporations above named have practically the same stockholders, more than 50 per cent. of the stock of each being owned by 'a certain foreign corporation.' It reviews the franchise held by the defendant, the Oklahoma Gas & Electric Company, and alleges failure to perform service as required thereby. Complainants in this cause (No. 3197) pray that this Commission take full charge, control and management

of the said corporations, to the end that the rights of the public may be protected against results of the failure to perform the duties of said corporations to the public, and that said corporations, and each of them, be adjudged to be in contempt of this Commission and dealt with accordingly.

“Separate answers were filed by the two defendant corporations in Causes 3188 and 3197, and the defendant, Oklahoma Gas & Electric, filed its answer in Cause 3192.

“The Oklahoma Gas & Electric Company, in its answer in Cause No. 3188 (*Ruth et al.*), says that complainants have the same right as citizens of any city not supplied with natural gas, to procure fuel of other kinds. It admits that it has a franchise in Oklahoma City, but denies that it exercises the right of eminent domain for the purpose of supplying said cities with all the natural gas used by inhabitants thereof; it denies that it possesses a monopoly; it admits that there is a contract between it and the Oklahoma Natural Gas Company as alleged. It admits that on the dates in December, 1917, referred to in said complaint, there was a shortage of gas in the city of Oklahoma City; it admits that it has not maintained any reserve supply and says that it is not practical to maintain tanks for storage of natural gas in such quantities as would be necessary to have provided sufficient gas on the dates mentioned. It states that in the year 1916, there was sold in Oklahoma City natural gas to the amount of \$926,000.00 and that of this sum this defendant received less than \$300,000 as its share under the contract with the Oklahoma Natural Gas Company referred to; that if storage capacity adequate to take care of

a shortage during the period covered by the complaint herein were ordered, at the expense of this defendant, it would be subjected to a loss of not less than \$900,000 per year, and if such storage were ordered at the expense of the defendant and its co-defendant the said defendant would be subjected to an outlay of at least \$300,000 per year more than they would receive for the sale of natural gas in Oklahoma City.

"The defendant Oklahoma Natural Gas Company's answer is that it is engaged in transporting natural gas to be sold in Oklahoma City and other towns; that it conveys natural gas to the city limits of Oklahoma City where it delivers the same to the Oklahoma Gas & Electric Company for distribution; that it has been engaged in this business for ten years, during which time it has used every means within its power to deliver at all times an adequate supply of gas for all purposes; that it has furnished an adequate supply in Oklahoma City except on rare occasions, one such exception being a few days in December, 1917; that it has at all times furnished all gas which it can procure or purchase in the vicinity of its pipe lines and also that it has extended its main line to the Morrison field by building a twelve-inch line northerly from Wellston, Okla., fifty-three miles, at a cost of \$800,000.00, which it was not bound in law to do. It alleges that its connection with the Morrison field, completed December 18, 1917, made available a new supply of approximately 20,000,000 cubic feet of gas per day, the capacity of its pipe line from such field. This defendant says that its original pipe line connecting Oklahoma City with the gas fields was a twelve-inch line, from which was supplied not only Oklahoma City, but Edmond, Guthrie, Shawnee, Chandler, and

various other towns; that said line was ample when constructed to supply the towns connected, but that Oklahoma City has grown since then from 30,000 to 100,000, Tulsa from 12,000 to 65,000, Muskogee from 20,000 to 35,000, and other towns likewise; that while this increase in population has occurred the gas supply available has shifted from place to place, original fields becoming depleted, new fields being reached at great expense, and they lasting but two or three years. This defendant alleges that the various fields which it has reached have been exhausted by waste rather than by use, while this company has done everything in its power to bring about conservation. It alleges that, in an effort to keep pace with the demand, it has, in addition to reaching out into new fields, built an additional twelve-inch line from Oklahoma City alongside its original twelve-inch line for a distance of thirty miles, to Wellston, thereby doubling its capacity, and that while other fuel has advanced in price the price of natural gas in Oklahoma City has not changed.

"This defendant denies that it has failed to furnish an adequate supply of gas except on very few days, and states that it has not continually represented that there would be an adequate supply of gas in Oklahoma City, but has advised the public to have other fuel on hand for emergencies. It denies that it has been negligent in construction or maintenance of its pipe lines or that storage facilities are either customary or practical as a means of providing a reserve supply of natural gas. It denies that its stockholders are practically the same as those of the Oklahoma Gas & Electric Company or that there is any common ownership or management of the two companies. It admits that the Oklahoma

Gas & Electric Company has a franchise for the distribution of gas in Oklahoma City, but denies that the people of Oklahoma City have a right to depend entirely upon these defendants for fuel, averring that the reason the people wish to use gas is because it is cheaper and more convenient than other fuel, and not because other fuel is not available, and that the people have every opportunity of procuring other fuel that they would have if there were no natural gas to be supplied.

"The answer of the Oklahoma Gas & Electric Company in Cause 3192 (*Donnell et al.*) and answers of both the defendants in Cause 3197 (*Selby et al.*) respond to all the allegations hereinabove set forth, and responses to the material issues for consideration are reasonably well covered in the answers heretofore reviewed at length. In addition, however, the Oklahoma Gas & Electric Company denies that its failure to have provided an adequate supply of gas at all times is chargeable with the death of any person and alleges that in its effort to provide all possible gas for domestic consumption, it has deprived all industrial consumers, including its own plant for the generating of electricity, of the use of gas for fuel, thereby incurring a loss of many thousand dollars on account of the high cost of other fuel."

**The Relief Prayed and the Commission's
Ruling Thereon.**

The complaint in Cause No. 3188, prayed for the following relief:

(a) That the Gas Company be required to show the amount of gas furnished daily since January 1,

1916, to the Gas and Electric company. The Commission makes no specific ruling on this particular prayer, but does not grant it.

(b) That the two companies be required to disclose their intercorporate relationship.

On this point, the Commission says:

"While the Commission's records are complete as to ownership of the two defendant corporations, this question has not been regarded as material, it may be said, however, that there is no evidence to support the allegations in the complaint touching the subject."

(c) That the companies produce contracts between them with reference to supplying gas for Oklahoma City.

No specific action is taken on this prayer, but the contract was on file with the Commission long before this suit was brought.

(d) That the Gas and Electric company be required to show daily consumption of gas in Oklahoma City, the volume necessary to supply Oklahoma City during certain months and to show pressure in ounces necessary to provide adequate service in Oklahoma City.

No order was made by the Commission on this point.

(e) That the defendants be required to provide and maintain gas storage facilities.

This prayer is denied by the Commission, which says (page 134):

“The question of the feasibility of storage facilities for a reserve supply of gas must be decided, as far as the record in this case is concerned, against the contention of the complainants. Their allegation that such relief is reasonably available is not supported; the fact is that it is impossible.”

The prayer in No. 3192 is that the defendant Gas and Electric Company be restrained from collecting its gas bills, pending the decision in this case.

This is denied by the Commission (page 147).

In No. 3197, the prayer is that the Commission take full charge, control and management of the defendant companies to the end that the rights of the public may be protected against results of their failure to perform their duties.

This prayer is likewise denied; the Commission saying (page 147):

“The prayer in Cause No. 3197 (*Selby et al.*) that this Commission take charge of and operate, in all respects, the property and business of the Oklahoma Gas & Electric Company will be denied.”

The prayer in No. 3197 is that the defendant companies be adjudged in contempt for violating Order No. 1028. This prayer is denied; the Commission saying (page 147):

“The prayer in Cause No. 3197 (*Selby et al.*) that fines for contempt of Order No. 1028 be imposed will be denied.”

No question was raised in the pleadings about the effect or propriety of recovering by absorption the gasoline content of the natural gas, but the question was raised during the taking of the evidence, and the Commission on the undisputed evidence, supported by the Bureau of Mines, found that this was not only unobjectionable but highly desirable, disposing of the subject as follows (Rec., pp. 134 and 135):

“The effect of the installation and operation of absorption plants for the extraction of gasoline from the gas in transportation through the pipes of the Oklahoma Natural Gas Company before delivery to the Oklahoma Gas & Electric Company was raised in the testimony. The defendants state that there are four absorption plants on the lines of the Oklahoma Natural Gas Company through which gas is supplied to Oklahoma City, but contend that the operation of these plants in no material degree causes reduction of the calorific properties of the gas. Dr. Edwin DeBarr, chemist of the Oklahoma State University, for twenty-five years, and director of the School of Chemical Engineering testified as follows:

Mr. Ames:

Q. ‘Does the extraction of the gasoline content and the water that may be in the natural gas make it an inferior fuel? A. Practically no reduction. Possibly there might be a reduction of from 1 to 2 per cent in its B. T. unit value, that is, its burning unit value. My authority for stating that is Bulletin No. 130, published by the Fuel Administrator of the United States, Mr. Burrell.’

"Other witnesses before the Commission in this and other cases have testified to the same effect. The bulletin referred to by Dr. DeBarr, in its summary on the subject of the absorption method of extracting gasoline from natural gas, says:

'The removal of gasoline does not reduce the heat value of the gas to an appreciable extent. In the case of natural gas from two fields that the authors of this paper experimented with, extracting the gasoline lowered the heat value only 3 per cent in one case and 2.2 per cent in the other.'

"The Public Utilities Commission of Ohio, in discussing this point in a letter to the Commission, has this to say:

'Average natural gas containing gasoline produces about one point per thousand cubic feet. There is very little loss of heating units in the removal of gasoline, from the fact that there is a shrinkage in each thousand cubic feet of about forty feet of gas, and the heating units in the remainder would not be affected over one per cent.'

"The Bureau of Mines working under the Department of the Interior advises the Commission as follows:

'So-called dry gas in Oklahoma or any field which contains enough of the higher hydrocarbons to make their extraction profitable, is always a gas of exceptional B. T. U. value. Even after the drying of these gases they have B. T. U. values far above that of pure methane, due to the ethane and other higher members which are not condensed by the absorption or compression treatments.

‘Regarding the actual losses of B. T. U. value we will quote Mr. Biddison’s complete tests to determine the losses.’

“The reduction in heating value due to the recovery of the gasoline content can be closely estimated. Suppose a given gas has a gasoline content of 100 gallons of gasoline per million feet of gas, or .0001 gallons per cubic foot of gas. The gasoline made by the absorption process will cause a shrinkage in volume of the gas treated, each gallon of gasoline being equal to about 35 feet of vapors. Then .0001 gallons of gasoline extracted from one cubic foot of gas would cause a shrinkage of $.0001 \times 35$, or .0035 cubic feet, leaving out of each cubic foot treated, .9965 cubic feet available for marketing. Now, gasoline of the nature made by this process has a heating value of about 20,400 B. T. U.’s per pound and is of about 80 Baume gravity, or $5,549 \times 20,400$ or 113,200 B. T. U.’s per gallon. The .0001 gallon extracted from one cubic foot of gas would contain $113,200 \times .0001$ or 11.3 B. T. U.’s.

“If the gas contained before treatment 1,000 B. T. U.’s per cubic foot, the residue of .9965 cu. ft. would contain 1,000 minus 11.3 or 988.7 B. T. U.’s. If .9965 cu. ft. contain 988.7 B. T. U.’s the heating value per cu. ft. is 988.7 divided by .9965, or 992.17 B. T. U.’s per cu. ft. Thus the extraction of 100 gallons per million of gasoline from a gas of 1,000 B. T. U.’s heating value results in a reduction of 992 B. T. U.’s or .8 of 1%. The effect on a gas of any other heating value of gasoline yield can be similarly calculated. * * *

“The reduction in heating value noted above is so small as to have no effect on the value of the gas to the consumer, and of this total re-

duction a portion takes place during transmission of the gas without an absorption plant, due to the natural condensation of gasoline in the transmission lines. This condensation has been a source of endless trouble and expense in the past, due to the effect of the condensate upon rubbers used in pipe line couplings, and the elimination of this trouble and expense has been the prime reason for the installation of some of the largest plants. * * *

* * * Even though a drying plant reduces the B. T. U. value two per cent, if the drying plants were not in use the condensate collecting in drips would and always has reduced the heating value at least half this much—but until the drying plants were installed this feature was considered natural, and no thought given to it. As a matter of fact, it is an immaterial point, since the varying and inefficient methods of burning gas far outweigh and hide any variation in its B. T. U. value as small as one or two per cent.

"During the acute period wherein patrons suffered from cold on account of lack of gas, the absorption plants on the gas lines were not in operation. During this time in the oil and gas fields lease operations were suspended largely on account of inability to use gas as a fuel, gas lines on leases being generally frozen up and even railroad engines performed indifferently and some of them not at all on account of inability to keep up steam. And during these times operators of absorption plants were unable to keep the same running on account of the freezing of water lines, stove lines, sprayers, etc.

"All authorities contributing to the information of the Commission agree that the extrac-

tion of gasoline from natural gas by the absorption process produces a more uniform commodity for delivery to the public and that in the absence of the application of such, or some similar process, the amount of gasoline and moisture in gas transportation lines collects at the low points and reduces the carrying capacity of the pipe and in some instances nearly, if not wholly, obstructs the passage of gas."

No issue was raised in the pleadings about the failure of the plaintiff in error to extend its lines to new fields, but the Commission considered this point and held the company free from blame in that respect, saying (page 137) :

"In these proceedings it has been asserted that the transportation company has been negligent in failure to extend its lines to other and more abundant sources of supply. The record shows (and the testimony on this point is undisputed and hence presumably bona fide) that in 1916 the officials of the company conceived the project of extending its lines to the Kay County field near the Kansas line and to the Loco field near the Texas line, that they endeavored to secure gas of the owners of gas wells in those fields; that they found such owners reluctant to bind themselves for future delivery to a company with no pipe line facilities in the particular localities involved, that the officers for and on behalf of the company undertook to secure pipe for the extension of its lines; that they found the steel mills overrun with orders, unable to make prompt deliveries and therefore unwilling to accept orders and promise such deliveries; that nevertheless they succeeded in placing an order

for sufficient pipe to extend from the main line of the company to the Morrison field; that delivery was promised in ample time to allow the construction of a branch line into the Morrison field before the winter of 1917-18 but that on account of conditions the mills were unable to make deliveries of pipe as ordered; that thereupon the company borrowed pipe and by prematurely abandoning a failing field redeemed other pipe and thus finally succeeded in reaching the Morrison field, but not, however, until the present supply of the transportation company had become so short as to be insufficient for the proper accommodation of all its patrons. And, too, the pipe lines thus laid being not of material selected by choice, but of that compelled by emergency, proved too small to afford sufficient gas in times of stress brought on by abnormal cold weather. *Thus viewing the situation in the light of facts as they are and laying aside all bias naturally arising on account of unsatisfactory service, the justice of the situation impels the conclusion that the charge of negligence in this respect is unfounded and unreasonable."*

The Relief Granted.

It will be observed that none of the relief prayed for was granted, and that on those questions which were raised during the trial without any pleadings to support them, the Commission found in favor of the Gas Company. The relief granted, therefore, is not pursuant to any prayer for relief. The relief which the Commission ordered was that if gas was delivered at a pressure of four ounces it should be regarded as normal, and that the consumer should pay

for it. If it was delivered at three ounces it should be regarded as three-fourths normal and that the consumer should only be required to pay for three-fourths of the gas which he consumed. If the pressure was two ounces, it should be regarded as fifty per cent normal, and the consumer should be required to pay for only one-half of the gas which he consumed. If it was delivered at one ounce, it should be regarded as one-fourth normal, and the consumer should be required to pay for only one-fourth of the gas which he consumed. If it was delivered at less than one ounce, it should be regarded as of no value and the consumer should not be required to pay for the gas which he consumed (page 132).

ASSIGNMENT of ERRORS.

I.

The Supreme Court of the State of Oklahoma erred in affirming the order of the Corporation Commission of the State of Oklahoma appealed from.

II.

The Supreme Court of the State of Oklahoma erred in holding that the order of the Corporation Commission of the State of Oklahoma appealed from does not deprive appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

III.

The order of the Corporation Commission of the State of Oklahoma appealed from denied to this appellant due process of law and operated to deprive this appellant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, in this, to-wit:

(a) The pleadings filed before the Corporation Commission of Oklahoma did not ask for a discount or rebate upon the bills of consumers, and the process served upon the appellant did not disclose that any discounts or rebates upon said bills were contemplated by the Corporation Commission; and the appellant had no notice or knowledge of the contemplated order requiring the discounting or rebating of the bills of those patrons for low pressure until the order requiring the discounting or rebating of said bills was actually made, and the appellant therefore, had no opportunity to defend against said order, or to produce either evidence or argument against its propriety, justice or legality.

(b) The evidence showed and the Corporation Commission found that the appellant had not been negligent in the performance of its public duty, and the Corporation Commission did not find that any person was charged for gas which he did not receive and use, but the Commission's order required a discount upon the bills for gas furnished during the two previous months, not because the appellant's patrons did not use and consume the amount of gas for which

they were charged, but merely because the appellant could not furnish them all the gas they wanted or needed. Said order was therefore arbitrary and unreasonable, and was made without evidence legally justifying the same, and therein operated to deprive the appellant of its property without due process of law.

(c) The Commission's order purports to treat appellant's duty of furnishing an adequate supply of natural gas as an absolute duty, and to penalize it for failure to do so, although the supply available in the fields had become inadequate and although it was humanly impossible to furnish an adequate supply.

(d) The order of the Commission requiring the rebating or discounting of bills incurred in the past was not an order regulating rates, but was an order depriving the appellant of indebtednesses which had accrued to it under an existing established rate, and was made in a proceeding in which there were neither proper parties, proper pleadings, proper notice, and without evidence legally warranting the same.

(e) The order of the Corporation Commission declared a four ounce pressure to be normal pressure, three-ounce pressure as three-fourths normal, two ounce pressure as one-half normal and one ounce pressure as one-fourth normal; and the Commission ordered that during the period of time when the pressure was four ounces the full bill should be paid, that for that period of time when the pressure was three

ounces only three-fourths of the bill should be paid, that for that period of time when the pressure was two ounces, only one-half the bill should be paid, that for that portion of the time when the pressure was one ounce, only one-fourth of the bill should be paid, and that for all gas used under one ounce, no part whatsoever of the bill should be paid; notwithstanding the evidence showed that the difference between the quantity and heating value of natural gas furnished at four ounces pressure and that furnished at three ounces pressure is less than one-half of one per cent, and the difference between the quantity and heating value of gas furnished at four ounces pressure and that furnished at two ounces pressure is less than one per cent, and the difference between the quantity and heating value of gas furnished at four ounces pressure, and at one-ounce pressure is less than one and one-half per cent. The difference in said pressure, therefore, does not justify the difference in the amount of the rebate or discount awarded and is purely arbitrary and unreasonable.

(f) The Corporation Commission did not inquire into, ascertain or consider the particular facts with reference to the individual consumers to whom the rebates or discounts were awarded, but each and every patron residing in the district in which the low pressure existed during any given period was awarded the discount upon his bill for that month, even though, during the period of low pressure he was using coal, oil or some other fuel, and even

though the whole amount of gas which he consumed was consumed during the period of normal pressure.

(g) The order of the Commission relieved appellant's patrons from the duty of paying any sum whatsoever for the gas which they used at less than one-ounce pressure, and thereby operated to take appellant's property without any compensation whatsoever and to deprive appellant of its property without due process of law.

(h) If the order of the Commission was legislative in character, then the effort of the Commission to give it a retroactive effect, and to apply it to bills incurred during the past and before the making of the order would have the effect of divesting appellant of property and property rights which had vested in it, and would operate to deprive appellant of its property, without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT.

FIRST.

The Basic Facts of the Natural Gas Industry.

(a) *The method of conducting the natural gas business.*

Natural gas is found in strata lying at various depths beneath the surface of the earth, the average in Oklahoma being probably 1800 to 2000 feet. Sometimes it is found in the same strata with petroleum; sometimes in a field where there is no petroleum; sometimes both petroleum and natural gas underlie the surface of the same land, but in different strata. The gas is forced through the well by what is termed the "rock pressure," meaning, of course, the pressure of the earth upon the gas in the porous structure where it is found. Gas is marketed direct from the well through the pipe line to the consumer's meter. It is not stored for future delivery, but performs a single continuous journey from the well to the consumer. When the rock pressure is great enough to push the gas through its entire journey, no aids to transportation are necessary, but as the rock pressure declines or the distance becomes too great, compressor stations are put on the pipe line so as to increase the pressure in the line and force the gas forward.

(b) *Natural gas is a failing resource.*

The story of natural gas in Oklahoma is largely the story of the Oklahoma Natural Gas Company, and

the uncertainties and hazards of the business are disclosed by the testimony of Mr. R. H. Bartlett, commencing on page 76 of the printed record. It started in 1906 to build a pipe line from Oklahoma City in a northeasterly direction to what was then known as the Hogshooter field, but before it got there, the field was exhausted, and its history from that day to this has been one of a constant search for gas and the constant exhaustion of field after field until today enormous quantities of its gas are being procured in fields altogether unsuspected when it was organized and many miles distant from the then known supply. Oil wells will last for many years, but a gas well is exhausted in a few months, those that continue to give a supply of gas even in greatly diminished quantities for more than two years being exceptional.

The story of the United States as a whole is told in official Government publications, particular attention being called to Bulletin 102, No. 7 of the Smithsonian Institution, entitled "Natural Gas, its Production, Service and Conservation" and Technical Paper No. 257 issued by the Bureau of Mines, entitled "Waste and Correct Use of Natural Gas in the Home."

At page 3 of the Bulletin, it is said:

"Natural gas is the least appreciated, consequently the most abused of the mineral resources in popular use. The issues involved are of direct concern to some ten millions of the inhabitants of the United States, and their range of influence does not stop even here; for they

form a prominent feature in the nation-wide problem of fuel supply which may be solved effectually only through coordinated attention to the component parts. This problem science and technology, working together, can take the initiative in simplifying, by pointing the way and devising means for its solution, but of their own initiative, they are powerless to go further. The responsibility of initiative in carrying forward the actual process of solution rests with the public, and resting with the public is contingent, as a first requisite, upon public opinion genuinely alive to the situation. This condition of affairs, naturally, is most pronounced in industrial connections of the public service order to which the activities comprising the natural gas industry belong; and this particular situation, bad enough from environment, is further aggravated by characteristics inherent in the resource.

"The public must look to remedying the situation or within a very few years lose the services of the resource already seriously impaired. The stimulus to action contributed in the form of technical discussions is inadequate and equally so that afforded in appeals to sentiment and sensationalism."

At page 21, it is said:

"Scarcity of Natural Gas.—Natural Gas is an exhaustible resource that when once used is gone forever. Every time a natural gas company sells 1,000 cubic feet of gas it is selling a part of its property. Furthermore, the number of natural gas consumers is increasing faster than the number of producing wells, thus placing an additional burden on each well, and the wells that are being drilled at the present time

have a lower average capacity than wells that were drilled several years ago, in this way making less gas available."

At page 5 of the Technical Paper 257, it is said:

"Much has been said by the Bureau of Mines and by others about the criminal waste of natural gas that is taking place in our gas fields. Natural gas, one of the most valuable mineral assets of the country, has been permitted to dissipate in such a manner that the public has derived relatively small value from it. In recent years the public has demanded that efforts be made to minimize this waste."

(c) *Natural gas is not reproduced by nature.*

When a foot of gas is taken from the stratum in which the deposit is found, the deposit is reduced by that much, and consequently the rock pressure at once begins to decline, as obviously every foot of gas taken out relieves the density of the deposit. When the gas deposit is exhausted, it is as completely exhausted as a deposit of coal and the field is abandoned just as a mine is abandoned when all the coal has been removed.

In Bulletin No. 102 above referred to, it is said at page 18:

"*Regeneration.*—Food and trees can be grown. Water supplies are constantly replenished by nature, but there is no regeneration in natural gas; and when the gas is once used it is gone forever. While no one knows exactly how the natural gas is formed, yet enough facts are known about it to indicate that nature's process

was a very slow one. It has taken millions of years to make the present concentrated supplies, and even though gas should now be formed in some parts of the earth's crust, the rate of formation will be so slow as to make such new gas pools of no interest or economic value for centuries, if ever."

It is said again at page 23:

"Natural Gas is Based on a Noncreatable and Nonregenerative Mineral.—The natural gas business is unique in that it is the only public utility service that does not, and in fact cannot, create the basic feature of the service that it renders to the public. Manufactured gas companies merely produce their gas from the raw fuel that they can buy in the open market; transportation agencies, like railroads or street railways, can easily create the motive source of their service; water utilities have their water supply constantly replenished by nature; intelligence transmission utilities, like the telephone and telegraph, can easily create the primary source of their service. However, the natural gas industry is alone in depending entirely on the caprice of nature for first the finding, and secondly the continuity of the supply of its primary source of public utility service."

(d) *Heating value of natural gas.*

The heating value of gas is measured by the British thermal units which it contains, and of course this varies in different fields. Ordinarily natural gas contains about one thousand B. T. U.'s per cubic foot as against about 600 in artificial gas.

(c) *Effect of pressure on heating value.*

The rock pressure at the well in a new field is frequently as high as 800 to 1,000 pounds, while the ordinary consumer's meter is constructed with a view of having gas delivered at a pressure of approximately four ounces. Obviously in any given receptacle, the quantity of gas varies with the pressure. The harder it is packed the more gas it contains. For practical purposes the B. T. U. content is figured on the basis of a four ounce pressure, that being approximately the pressure at which gas is delivered to the consumer. If we take a receptacle which contains 1000 cubic feet and fill it with gas at atmospheric pressure, there are 1,000 cubic feet of gas. If we add another foot, we still have 1,000 cubic feet of gas, but the density has been slightly increased. The volume of the gas is unchanged, but the B. T. U. content has been increased by the number of B. T. U.'s in the one foot of gas added. The addition of every foot of gas, therefore, which can be packed into this receptacle containing 1000 cubic feet will increase the B. T. U. value of the receptacle but will not increase the volume of the gas, because no matter what the pressure may be, the receptacle containing 1,000 cubic feet contains the same volume. As a matter of scientific and experimental fact, if we start with a vessel containing 1,000 cubic feet of gas at atmospheric pressure, and add to this volume 4.2 feet, the pressure is one ounce above atmospheric pressure. If we add 8.5 feet, the result is a two ounce

pressure, while 12.7 feet produce a three ounce pressure, and 17 feet produce a four ounce pressure (Rec., p. 132).

The difference between 1000 cubic feet of gas delivered at four ounce pressure and at atmospheric pressure, therefore, is the B. T. U. content of 17 feet of gas, or 1.7%.

(f) *The use of gas meters.*

The meter has nothing to do with the pressure. It registers a foot of gas whenever that foot passes through it. Of course it cannot register gas at atmospheric pressure, because there must be some pressure to open the valves of the meter, but whenever gas is above atmospheric pressure, it will pass through the meter and will be registered as it passes. The meter does not measure the B. T. U. content. It merely measures the volume of the gas, and, as previously stated, if the gas is under a four ounce pressure, it contains 1.7% more heating value than at atmospheric pressure.

On this subject at page 42 of Bulletin 102, before referred to, it is said:

"The popular belief is that meters run faster when the pressure is low than when the pressure is high. This is contrary to the facts. Variation in pressure makes no appreciable difference in the registration of the meter, the meter merely registering, within a reasonable limit of tolerance, the amount of gas that passes, and this is neither increased nor decreased by changes in pressure."

(g) Pressure as affecting rapidity of delivery.

It is obvious that the greater the pressure the more rapidly the gas flows through the lines, and consequently at a pressure of four ounces the gas passes through the meter more rapidly than it does with a pressure of one ounce. In this case the Commission had tests made on the lines of the Gas and Electric Company with the following result (Rec. p. 123) :

Pressure in ounces.	Cu. ft. of gas reg- istered on meter.	Length of test in minutes.
8	5	3
7½	4.85	3
7	4.7	3
6½	4.6	3
6	4.5	3
5½	4.3	3
5	4	3
4½	3.8	3
4	3.6	3
3½	3.4	3
3	3.1	3
2½	2.8	3
2	2.5	3
1½	2.1	3
1	1.65	3
½	.98	3
¼	.6	3

This confirms the statement quoted under the last subdivision from the Bulletin of the Smithsonian Institution and is in harmony with the results obtained by other tests. It will be observed that at a pressure of four ounces the meter in this test during three

minutes registered 3.6 cubic feet; at a pressure of three ounces 3.1 cubic feet; at a pressure of two ounces 2.5 cubic feet; at a pressure of one ounce, 1.65 cubic feet; and at a pressure of one-half ounce, .98 cubic feet. This merely proves that which is obvious, namely, that gas moves more slowly as the pressure is reduced, just as a train moves more slowly as the steam applied is reduced. It does not mean that the consumer is paying for gas which he does not receive, merely that it is being delivered to him more slowly.

(h) *Distinction between rapidity of delivery and quantity delivered.*

This distinction must be kept in mind in order to avoid confusion which might otherwise arise out of the consideration of higher or lower pressures. As shown by the table just quoted, a higher pressure delivers the gas more rapidly, and consequently, assuming that the gas is properly applied by the consumer, a given result of heating or cooking will be accomplished more quickly. It does not mean that a given result will be accomplished with less gas.

(i) *Pressure and service.*

This subject is discussed at page 41 of Bulletin No. 102 as follows:

“The pressure carried by most natural gas companies has been too high for efficient service. This has had the further undesirable feature of teaching the consumer to believe that he was not receiving service unless the gas could

be heard hissing through the orifice in the gas mixer. It has been demonstrated that:

“1. Satisfactory cooking operations in frying potatoes, boiling potatoes, frying beefsteak, and pan-broiling beefsteak can be carried on with 0.2 ounce natural gas pressure. This merely requires that the short flame and cooking vessel be brought together. The changes in vessel position necessary to permit satisfactory operation at pressures as low as 0.2 ounce are easy to make, require no special changes in existing stoves, and consist merely, with drilled burners, in placing three nails in three of the drilled holes, and, with slotted burners, of placing three small pieces of tin in three of the slots, in order to support the cooking vessel at the proper distance from the burner, and close enough so that the short flame can do effective work.

“2. Better results are obtained with pressures in the neighborhood of 2 ounces than at 4 ounces.

“3. Less gas is used at pressures in the neighborhood of 2 ounces than 4 or 5 ounces.

“4. Manufactured gas range gives better results than natural gas range because the former is designed for low pressure.

“5. There is very little difference in the time required to carry on cooking operations with pressures of from 1 to 5 ounces.

“Therefore, if the consumer will use proper appliances, satisfactory cooking operations can be carried on with pressures as low as 0.2 ounce and the gas passing through the meter will perform a usable service.

“With heating appliances, if the mixer is properly adjusted the combustion at low pres-

tures can be made substantially as thorough as at high pressures, and the consumer can have the benefit of all the heat generated by the burning gas, although if the pressure is low he will invariably not have nearly as much as he would like to have or as he needs. However, all of the gas measured by the meter and burned in the heating appliance is used for a useful service, so far as it goes, although under extreme low pressure conditions there is not enough to give all consumers all they want."

It will thus be seen that it has been demonstrated that satisfactory cooking operations can be carried on with two-tenths of one ounce pressure and that better results are obtained with a pressure of two ounces than four. This is confirmed by charts on pages 18 and 19 of Technical Paper 257 issued by the Bureau of Mines giving results of tests made by the Department of Home Economics of the Ohio State University, where it is shown that a waste of 87% occurred in the use of four to five ounce pressure with long flames, and that this waste was reduced to 57% with gas at one to two ounce pressure with short flames.

(j) *The duties of the consumer.*

(1) The consumer supplies the service pipe leading from the street mains of the Gas Company to his residence; the piping contained in his residence; the furnace, stove and any other appliances used by him in the consumption of gas. Much of the complaints of inadequate natural gas service result

from inadequate pipes and defective appliances. This subject of waste by the consumer is fully discussed in Technical Paper No. 257 issued by the Bureau of Mines above referred to, where it is shown on pages 18 and 19 that the waste ranges as high as 87%, and at page 7 it is said:

“Gas service is radically different from every other kind of public utility service in that the gas cannot be used by the consumer as received, but—

“*First*, must be mixed in proper proportion with another substance (atmospheric air);

“*Second*, this mixture must then be completely burned;

“*Third*, the flame must be so directed that the heat generated will effectively get into the food, air, water, or mantle that is being heated, with a minimum loss.

“The results obtained will depend primarily on the gas utilization appliance and the consumers' skill and care in operating. All these operating features are beyond the gas company's control, but are vital in determining the quality of the service produced by one consumer and the effect on the service of other consumers.”

(2) The consumer is responsible for the economical use of the gas. While this is obvious, the following is quoted from page 43 of Bulletin 102:

“The consumer's use of gas has an important bearing on the efficiency of results that may be obtained, as discussed on page 40. Few people appreciate that even in an ordinary frying operation effective results can not be obtained unless

the vessel position is close enough to the flame so that the tip of the flame can deliver the heat generated in an effective manner. Even with high pressure and long flames, if a strong draft should deflect the flame the cooking service will be unsatisfactory."

(3) The consumer should supply himself with other fuel to be used at the time of gas shortage in the coldest weather. These gas shortages in the severest weather are habitual and nation-wide, and have become so serious that the Secretary of the Interior called a conference of Governors and representatives of the various State Commissions and public utility companies in Washington on January 15th, 1920. The proceedings of that meeting have been published by the Department of the Interior and contain much interesting information on the subject.

The Gas and Electric Company took the precaution to warn its consumers of the necessity for providing for emergency heating by distributing a handbook to every consumer, which amongst other things contains the following (Rec., p. 109):

"Natural gas is one of Oklahoma City's greatest assets—one of the biggest contributors to the comfort and convenience of its citizens and a source of cheap fuel for industrial purposes.

"Periods of extreme cold weather sometimes cause a brief demand for gas which no practicable and financially possible transmission system can fully supply.

“Because of this fact, and the further fact that any long distance pipe line is liable to damage from floods and other unavoidable causes, we advise our customers to maintain some kind of auxiliary heating apparatus for use in possible emergencies.”

(4) THE CONSUMER CAN TEMPORARILY DISCONTINUE THE USE OF GAS.—If the consumer's appliances are defective, or if for any reason he thinks he receives no value from the use of the gas he should shut it off. Obviously the Natural Gas Company, which supplies gas to all the principal towns of the State, cannot be constantly advised of the conditions obtaining in the residence of each consumer. It is not responsible for his appliances or connections, nor is the distributing company which acts as its agent. It has no right to cut off one town on a cold day in order to furnish an adequate supply for another town. It has a right, which it exercises, of cutting out the use of gas for industrial purposes, but it has no right to cut off one domestic consumer so as to supply gas adequately to another consumer. The result is that each consumer must determine for himself whether he is securing a supply of gas which is of value to him, and if he thinks he is not, he can very easily close his gas jets and use any other fuel. Other fuel, of course, is just as available to the inhabitants of Oklahoma City as it is to the inhabitants of Washington, and if the inhabitants of Washington can do without natural gas all the time, the inhabitants of Oklahoma City can make arrangements

to do without it, at least in part, on a half dozen of the coldest days in each year.

SECOND

The Theory on Which the Corporation Commission Made Its Order.

The Commission states its theory on pages 128 to 130 of the record. Briefly, it is, that, as gas in normal times is delivered at a pressure of approximately four ounces, the Company should not be allowed to collect the full rate for gas delivered at a lower pressure. No premium, however, is put on gas delivered at a higher pressure. The Commission expresses the opinion that while naturel gas is a commodity (*West v. Kansas Natural Gas Company*, 221 U. S. 229) and while the company is selling a commodity, still it is rendering a service, and that when the pressure is under four ounces the service is sub-normal. The Commission, without evidence to support it, arbitrarily holds that gas delivered at a three ounce pressure should be treated as three-fourths service and should be paid for at three-fourths of the price prescribed; if two ounce pressure, two-fourths; if one ounce pressure, one-fourth; if under one ounce, nothing. The Commission finds that in Oklahoma City there are approximately thirty stations at which the Gas and Electric Company keeps a pressure guage record, and for the purpose of enforcing its order, it takes the record at this gauge as applicable to all persons within the area served by that

station. Finally, the Commission says (Rec., pp. 131 and 132):

"In computing the extent of the insufficiency of service the Commission has considered that the defendants assumed to give service during twenty-four hours each day, and an analysis of the evidence furnished by the pressure charts has enabled the Commission to determine the number of hours in each month in which service was less than normal. Full credit has been allowed the defendants for each hour where pressure was four ounces or better. Hours when pressure was three ounces have been rated at 75% normal, two ounces, 50%; one ounce 25%, and less than one ounce none. By way of illustration: 12 hours at 3 oz. pressure were considered 9 hours normal; 12 hours at 2 oz. pressure were considered 6 hours normal; 12 hours at 1 oz. pressure were considered 3 hours normal; 12 hours at less than 1 oz. pressure were deducted in whole from the total number of hours in the period."

T H I R D

Errors in the Theory of the Corporation Commission.

- (a) *There is not a difference of 25 per cent in the volume of gas caused by a change of one ounce in pressure. The difference is only 4/10 of 1 per cent.*

This has been covered by sub-paragraphs "d", "e", "f", "g" and "h" under the first division of this brief. In fact the Commission very frankly admits that its order does not compensate the company for the gas used by the consumer, saying (page 132):

"The plan of adjustment above outlined, the Commission realizes, does not account for the amount of gas actually consumed at pressures less than four ounces, as contended for by the gas companies, and as verified, or rather asserted by gas engineers and hand-books.

"On this point the Ohio Commission advises the Oklahoma Commission as follows: '* * * The meter will register the same amount of gas regardless of delivery pressure. In other words, domestic meters measure volume irrespective of pressure. The relation of pressure to heating value is illustrated as follows: One thousand feet of gas at atmospheric pressure will give a certain amount of heat. The heat of one thousand feet of gas under one ounce pressure will give the equivalent of 1004.2 feet; under a 2 ounce pressure 1008.5 feet; under 3 ounce pressure 1012.7 feet; under 4 ounce pressure 1017 feet; under 5 ounce pressure 1021.2 feet; and under 6 ounce pressure 1025.5 feet.'

"This closely accords to the testimony given by Dr. DeBarr of the University of Oklahoma, and others who testified upon this subject at the hearing before the Commission."

(b) *The sale of natural gas is not the sale of a service.*

The Commission has confused the sale of a commodity used for fuel with the sale of a public service by a public utility corporation, doubtless because natural gas is delivered through a system of pipes underlaying the streets of a city instead of wagons hauled over the streets. A railroad company sells service. The shipper pays to have his freight transported. The passenger pays for transportation for

himself and baggage. When the transportation has ended, the freight and the passenger have merely shifted their locations. They have not consumed anything belonging to the railroad company. They take nothing away with them. They have merely received transportation and nothing else. This, therefore, is a service. It is different from the sale and delivery of natural gas which the consumer takes and uses and by so doing thereby takes something from the company which can never be returned, which can never be duplicated. Street railway companies, telegraph companies and telephone companies are other illustrations of public service companies. A natural gas company may be a public utility company, but it is not selling service; it is selling a commodity.

(c) *Natural gas is a commodity.*

In *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229, the court says (255) :

“Gas, when reduced to possession, is a commodity; it belongs to the owner of the land, and, when reduced to possession, is his individual property subject to sale by him, and may be a subject of intrastate commerce and interstate commerce.”

It is true that when this commodity has been purchased by a consumer he gets service out of it, but this is true of coal or wood or any other fuel. The Gas Company, therefore, does not sell a service, but sells a commodity.

(d) ***Natural gas is a mineral.***

—*Ohio Oil Co. v. Indiana*, 177 U. S. 190, 203,
and cases cited.

It is so recognized in the mining laws of the United States and by all the scientists. It is produced by nature, by a process which man has not discovered. It is used primarily for fuel. It is more expensive and more hazardous to mine than is coal. It is more difficult to reduce the possession, and being in possession to retain, than any other fuel. It is a mineral and not a service, and the Gas Company sells a mineral and not a service.

(e) ***There is only a nominal difference in the service obtained from gas at pressures varying between one and four ounces.***

This is covered by sub-paragraph "i" of the first division of this brief, in addition to those sub-paragraphs referred to under sub-paragraph "a" of this division. It has been demonstrated that service can be obtained from gas at a pressure of two-tenths of one ounce. The Commission bases its order upon the assumption that a four ounce pressure is normal and that anything less than that is subnormal. This is mere arbitrary assumption. The only thing in the record to which it can be attached in any way is the testimony that the average meter used by domestic consumers is built by the manufacturers to measure gas at a four ounce pressure. This does not mean that gas at more or less than four ounces is not measured accurately, nor that it is worth 25% more

or less for every ounce of variation, nor does it mean that gas at three ounces is only 75% in volume or value of gas at four ounces. The testimony heretofore referred to shows that the difference between a four ounce and three ounce pressure is the equivalent of 41½ feet of gas per thousand cubic feet. There is no basis whatever for saying that gas at three ounce pressure is three-fourths normal. On the contrary, the record shows in sub-paragraph "j" just referred to, that better results are obtained with pressures in the neighborhood of two ounces than four.

(f) *The errors involved in penalizing low pressures are pointed out by the Smithsonian Institution.*

Discussing this point, at page 49 of Bulletin 102 of the Smithsonian Institution, it is said:

"A penalty clause providing for a discount when pressures less than four ounces are maintained has been suggested as a means of guaranteeing good service. However, instead of guaranteeing service it stimulates waste for the reasons given on page 54. The penalty clause is inequitable and fails to recognize the well known operating characteristics of the mining, transmission and distribution of natural gas, which, therefore, differentiate this from every other type of public utility service, more particularly by:

"1. Failure to recognize that the heating value of the gas does not decrease proportionally with the decrease in gauge pressure.

"2. Failure to recognize that neither the

efficiency nor the efficacy of gas decreases proportionally with the decrease in gauge pressure

“3. Failure to recognize that higher efficiencies may be obtained at pressures below 4 ounces than at four ounces and above.

“4. By ignoring rate of flow or volume of gas to be delivered and the close relationship that exists between volumetric demands and the constantly changing and uncertain and unpredictable atmospheric temperature changes.

“5. General conservation methods in the field have not been followed in the past; gas has been produced, transmitted and distributed in a most wasteful manner, which has, therefore, very greatly depleted available supplies, highly desirable for peak-load service.

“6. The uncertain, migratory, and fugitive nature of the gas in the underground reservoirs, where it is entirely beyond the control of the human will, legal process, or contractual relationship, and yet where its expansive properties under the ground must be taken as the initial step for the delivering of service to consumers 200 miles away, obviously makes it evident that considerable leeway must be allowed in service standards.”

FOURTH.

The Erroneous Theories on Which the Supreme Court Affirmed the Order of the Corporation Commission.

- (a) *That the established rate was a maximum rate, based on quantity of gas and adequacy of service.*

This is purely assumption. It is based on no

evidence and is directly contrary to the fact. If we are wrong in this statement, we request the Attorney General to call to the attention of the court any evidence in the record sustaining this assumption. This assumption illustrates the lengths to which one error may be predicated upon another until the facts are entirely forgotten. The court assumes that the service theory is based on laws and orders of the Commission. The Commission did not rest its theory on either laws or orders. There are none. On the contrary, the Commission rested its service theory on the pamphlet circulated by the Oklahoma Gas & Electric Company (page 128), and in order to set this matter at rest we quote the following:

“Counsel for the Oklahoma Gas & Electric Company handed to a witness a copy of the ‘Gas Customers’ Hand Book’ which it was stated, is furnished to all consumers, and called attention to a paragraph on page 5 advising consumers that ‘Periods of extreme cold weather sometimes cause a brief demand for gas which no practical and financially possible transmission system can fully supply. Because of this fact and the further fact that any long distance pipe line is liable to damage from floods and other unavoidable causes we advise our customers to obtain some kind of auxiliary heating apparatus, for use in possible emergency.’

“The Commission notes on page 4 of said Hand Book the following: ‘The Oklahoma Gas & Electric Company earns its wages. It wants no revenue which does not rightfully belong to it for service performed.’

“The Commission is sure that the public wants service and is willing to pay a reasonable price therefor. The above assurance of the Oklahoma Gas & Electric Company that it wants no revenue which does not rightfully belong to it for service performed clearly indicates that an adjustment of the differences arising between the company and its patrons by reason of inadequacy of service as alleged and proved in this case not only is the solution of the present problem which the Commission must prescribe but the one which this company itself must expect.

“The Oklahoma Natural Gas Company is the secondary party in interest as between the two defendants. The contract referred to in testimony whereunder it supplies gas for distribution in Oklahoma City provides that it shall receive as compensation therefor two-thirds of the collections of the Oklahoma Gas & Electric Company for gas furnished the public. An adjustment fair to the distributing company and the public, therefore, must be presumed to be fair to the pipe line company, and will be so held.”

The Oklahoma Gas & Electric Company not only distributes natural gas for the Oklahoma Natural Gas Company, but generates and sells electrical current. The above quotation contains a specific reference to natural gas, which calls the attention of the public to the fact that it is not possible to supply the demand in periods of extreme cold weather. After quoting this, the Commission refers back to a previous page of the Hand Book and quotes its platitudes about earning its wages. It overlooks the spe-

cific statement that it is not possible to furnish natural gas in adequate quantities in periods of extreme cold weather, and sees nothing but its generalities about earning its wages. The point, however, is, that whether right or wrong, the Commission does not base its ruling upon either law or order, but upon the Oklahoma Gas & Electric Company's Hand Book. Not the Hand Book of the Oklahoma Natural Gas Company. The Commission, therefore, rests its decision upon the Hand Book, while the Supreme Court assumes, contrary to the fact, that the decision was rested upon some order or statute. The rate is not based on adequacy of service, nor is it based upon the amount of pressure. The rate is based on the quantity of gas alone.

(b) *The court erroneously states that this order is a legislative act.*

The order does not prescribe a rate applicable to the future. It orders a refund on a rate already collected. This is a judicial, not a legislative function.

—*Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210;

Ross v. Oregon, 227 U. S. 150, 163.

(c) *The court erroneously assumes that the requirement of due process of law is satisfied by a hearing, regardless of the result of the hearing.*

It is true that the plaintiff in error had a hearing before the Corporation Commission, but due process of law is not satisfied merely with a hearing. The taking of one's property without compensation.

either without a hearing or after a hearing is a denial of due process of law.

—*Wadley So. Ry. Co. v. Georgia*, 235 U. S. 651, 660;

C. B. & Q. R. R. Co. v. Chicago, 166 U. S. 226, 234.

(d) ***The court erroneously assumes that this taking is valid, unless there is a showing that the income, as a whole, was an inadequate return on the total investment.***

This point requires no elaboration. It is sufficiently disposed of by the case of *C. M. & St. P. Ry. Co. v. Wisconsin*, 238 U. S. 491, where this court held a statute invalid which required sleeping car companies to close the upper berth upon the demand of the occupant of the lower berth, provided the upper berth was not sold, on the ground that it took the saleable property of the company without compensation. There was necessarily involved in that case a holding that the entire revenues of the Pullman Company were immaterial, because such a statute would in no wise affect the revenues of the company. On the court's theory, railroads might be required to carry passengers for a fraction of a cent—or free on crowded trains—if the revenues from freight yielded an adequate return on the investment; or outrageous penalties might be unreasonably imposed if they did not reduce the total earnings to the point of confiscation. See cases cited in the next paragraph.

In *Napier v. D. L. & W. R. Co.*, (N. J.) 102 at 444, a statute was declared unconstitutional which

required railroads to carry state officers free and no inquiry was made concerning revenues of the company. The same is true in *Wilson v. United Traction Co.*, 76 N. Y. S. 203, with reference to a statute requiring street railroads to carry policemen free.

F I F T H .

**The Order of the Commission as Affirmed by the
Supreme Court Takes From the Plain-
tiff in Error Its Property Without
Due Process of Law.**

- (a) ***A natural gas company is under no duty to supply gas which does not exist.***

—Wyman on Public Service Corporation,
Sees. 271 and 652.

In section 271, the author says:

“Where the supply that is offered has a natural limitation, it will usually be found that the profession (to serve) is limited to the exploitation of that supply. Thus a company which undertakes to supply natural gas from a given field cannot be held liable for the failure of the supply to meet the demands of the community.”

Again in section 652, the same author says:

“In irrigation we have a typical case of natural limitation. When the flow of stream is diverted by irrigation works, the profession of the managing company may fairly be said to be confined to the water that may properly be appropriated. It is consequently under no duty to provide other sources of supply even against recurrent drouth, as its obligation is limited to the

proper diversion of the appropriated water. Only while it has available water is it bound to supply applicants."

- (b) ***By this order gas is taken from the company and given to its customers, in some cases for no compensation, and in others for admittedly inadequate compensation. This denies due process of law.***

When the gas is taken by the consumer at less than one ounce pressure, the order requires that no compensation be allowed, and where it is taken at one, two or three ounce pressure, as the case may be, the compensation is one-fourth, two-fourths or three-fourths of a reasonable price. The price charged was a rate approved by the Corporation Commission, and based solely on the quantity of gas delivered. There is therefore no controversy about the rate being reasonable. In fact, this is not a rate case. It is a case requiring the company to refund to its customers all or a part of a reasonable rate previously collected, not because the rate collected was unreasonable, but because the company failed to supply gas which nature had not produced. By this order the property of the company is bodily taken from it and donated in whole or in part, to various private citizens, who choose to take it. This is unlawful.

In *Davidson v. New Orleans*, 96 U. S. 97, the court says (102):

"It seems to us that a statute which declares in terms, and without more, that the full and exclusive title of a described piece of land, which

is now in A., shall be and is hereby vested in B., would, if effectual, deprive A. of his property without due process of law, within the meaning of the constitutional provision."

In *Missouri Pac. Ry Co. v. Nebraska*, 164 U. S. 403, the court, in holding a Nebraska statute void which required railroad corporations to grant locations upon its right-of-way to elevators, said (417):

"The taking by a state of the private property of one person or corporation, without the owner's consent, for the private use of another is not due process of law, and is a violation of the Fourteenth Article of Amendment of the Constitution of the United States."

In *Napier v. Delaware, L. & W. R. Co.*, (N. J.) 102 Atl. 444, the syllabus is as follows:

"Even though the state reserved the right to amend, alter, or repeal the charter of a railroad company, it cannot by virtue of such right impose on the railroad company the burden of carrying free of charge state officials; for that works a deprivation of the railroad company's property without due process of law, in that it deprives the company of the right to charge such officials fare for their carriage."

In *Wilson v. United Traction Co.*, 76 N. Y. Supp. 203 (72 Appeals Division 233), the syllabus is as follows:

"Laws 1895, c. 417, authorizing the mayor of a city or incorporated village to issue a certificate to policemen, and making it the duty of all street railroads in such city or village to

transport policemen having such certificates free of charge, while traveling in the performance of their duties, is unconstitutional and void, as depriving the railroad company of its property without due process of law."

- (c) ***By this order a penalty is imposed upon the company for failure to do that which is impossible. It is unconstitutional to impose penalties for failure to do that which is unreasonable. Much more is this true of that which is impossible.***

In *Southern Tel. & Tel. Co. v. Danaher*, 238 U. S. 482, a statute of Arkansas imposed a penalty of \$100 a day upon telephone companies for refusing their facilities to patrons who complied with "the reasonable regulations of the company." One of the company's regulations withheld service from customers who were in debt to it. Mrs. Danaher was denied service for 63 days because of indebtedness to the company. She recovered a judgment for \$6300.00 upon a holding that this was not a reasonable regulation. This court reversed the Supreme Court of Arkansas, holding that the enforcement against a telephone company of these penalties for refusing to furnish service under such circumstances deprived the company of its property without due process of law.

In *C. M. & St. P. Ry Co. v. Wisconsin*, 238 U. S. 491, this court held that a statute of Wisconsin was void which imposed penalties upon a sleeping car company for refusing to close the upper berth, although it was unoccupied.

In *St. L. Iron Mountain & South. Ry. Co. v. Wynne*, 224 U. S. 354, this court held an Arkansas statute void which imposed penalties upon a railroad company for failing to pay live stock claims within thirty days after notice.

In the leading case of *Houston & Texas Central R. R. Co. v. Mayes*, 201 U. S. 321, a statute of Texas requiring a railroad company to furnish cars regardless of every other consideration except strikes and other public calamities was held invalid both as transcending the police power and as burdening interstate commerce.

At page 329, the court says:

"While there is much to be said in favor of laws compelling railroads to furnish adequate facilities for the transportation of both freight and passengers, and to regulate the general subject of speed, length and frequency of stops, for the heating, lighting and ventilation of passenger cars, the furnishing of food and water to cattle and other live stock, we think an absolute requirement that a railroad should furnish a certain number of cars at a specified day, regardless of every other consideration except strikes and other public calamities, transcends the police power of the state and amounts to a burden upon interstate commerce. It makes no exception in cases of a sudden congestion of traffic, an actual inability to furnish cars by reason of their temporary and unavoidable detention in other states, or in other places within the same state. It makes no allowance for interference of traffic occasioned by wrecks or other

accidents upon the same or other roads, involving a detention of traffic, the breaking of bridges, accidental fires, washouts or other unavoidable consequences of heavy weather.

"A dereliction of the road in this particular which may have occurred from circumstances wholly beyond the control of its officers, is made punishable not only by damages actually incurred by the shipper in the detention of his stock, but in addition thereto by an arbitrary penalty of \$25 per day for each day of detention. The penalty which was assessed in this case, though the detention was only for one day, amounted to nearly as much as the damages, and might in another case amount to far more."

Again, on page 331, it is said:

"While railroad companies may be bound to furnish sufficient cars for their usual and ordinary traffic, cases will inevitably arise, where by reason of an unexpected turn in the market, a great public gathering, or an unforeseen rush of travel, a pressure upon the road for transportation facilities may arise, which good management and a desire to fulfill all its legal requirements cannot provide for, and against which the statute in question makes no allowance."

Thus is clearly recognized the doctrine that under the police power regulations must be reasonable and that it is unreasonable to require that which is beyond the power of the corporation. Here the gas company is penalized for a thing entirely beyond its control, and the principle announced in the *Mages* case condemns such a ruling.

In *Morrisdale Coal Co. v. Pennsylvania R. R. Co.*, 230 U. S. 304, 312, it is implied that the extent of a railroad's obligation after having made reasonable efforts to supply cars is to supply those it has without discrimination, and this rule is more specifically recognized in *Penna. R. R. Co. v. Puritan Coal Co.*, 237 U. S. 121, where it is said at page 133 by Mr. Justice LAMAR:

"Ordinarily, a shipper, on reasonable demand, would be entitled to all the cars which it could promptly load with freight to be transported over the carrier's line. But that is not an absolute right and the carrier is not liable if its failure to furnish cars was the result of sudden and great demands which it had no reason to apprehend would be made and which it could not reasonably have been expected to meet in full. The common law of old in requiring the carrier to receive all goods and passengers recognized that 'if his coach be full' he was not liable for failing to transport more than he could carry. *Hutchinson on Carriers*, 146; *Lovett v. Hobbs*, 2 Shower 127; *Riley v. Horne*, 2 Bing. 217; *Peet v. Ry.*, 20 Wis. 594. The same principle is applicable to those who transport freight in cars drawn by steam locomotives. The law exacts only what is reasonable from such carriers— but, at the same time requires that they should be equally reasonable in the treatment of their patrons. In case of car shortage occasioned by unexpected demands they are bound to treat shippers fairly, if not, identically."

In *St. L. S. W. Ry. Co. v. Clay Gin Co.*, (Ark.) 92 S. W. 531, in construing a statute requiring rail-

real companies to furnish sufficient facilities for the carriage of freight the court says (533) :

“The statute does not intend to make the duty of carriers to furnish transportation facilities an absolute one, for it would be unreasonable to conclude that the legislature intended to impose upon them, and which would be impossible to perform, and yet, for such non-performance, to exact of them heavy penalties. The statute under consideration is but declarative of the requirements of the common law as to the duty of furnishing transportation facilities. After declaring what that duty is, it prescribes the penalty for its non-performance. ‘A common carrier, for such goods, as he undertakes to carry, is bound to provide reasonable facilities of transportation to all shippers, at every station, who in the regular and ordinary course of business offer their goods for transportation. The carrier is not required to provide in advance for any unprecedented and unexpected rush of business, and therefore will be excused for delay in shipping, or even in receiving goods for shipment, until such emergency can in the regular and usual course of business be removed.’ *Railway Co. v. Oppenheimer*, 64 Ark. 271, 43 S. W. 150, 44 L. R. A. 353; 4 Elliott on R. R., Sec. 1470; Hutch. on Car., Sec. 292; 6 Cyc 372, note 2. To be sure the carrier is liable where he fails entirely to furnish transportation. But the liability of the carrier under the Act of March 1, 1899 (Kirby Digest), is founded not so much on the inadequacy of the facilities at his command to supply the demands of shippers, as on his refusal or failure to make the facilities which he has available to all who are similarly situated without discrimination or delay. For the act makes it the duty to furnish without discrimina-

tion or delay. So if the carrier by reason of some unforeseen and unusual or unprecedented condition in the traffic is unable to furnish cars for the accommodation of all shippers he must, in order to escape liability under this statute, furnish such as he has to all shippers without discrimination or delay."

This case is cited with approval in the case of *St. L. M. & S. R. Co. v. Laser Grain Co.*, (Ark.) 179 S. W. 189, 192.

In *State ex rel. McComb v. C. B. & Q. R. R. Co.*, (Neb.) 99 N. W. 309, it is held that a railroad company is not required to furnish cars to cover the rush of the movement of the grain crop, the syllabus being as follows:

"It is the duty of a railroad company to furnish the necessary cars to transport the goods which are offered to it for carriage, but, when the carrier has furnished itself with the appliances necessary to transport an amount of freight which may in the usual course of events be reasonably expected to be offered to it for carriage, taking into consideration the fact, that at certain seasons more cars are needed, it has fulfilled its duty in that regard, and it will not be required to provide for such a rush of grain or other goods for transportation as may only occur in any given locality temporarily or at long intervals of time.

"2. It is the duty of a railroad corporation both under the common law, and by statute in this state, to supply cars to all persons or associations handling or shipping grain, without favoritism or discrimination in any respect whatever.

"3. During a temporary scarcity of cars, a railroad company is entitled to consider, in apportioning cars among grain dealers, their relative volumes of business and facilities for the loading of cars. Though there may be a difference in the number of cars furnished each is in a fair proportion to his volume of business, facilities for loading, and grain in sight, no shipper has right to complain of this difference, though he may not obtain all the cars he deems necessary for his business."

In the case at bar, the Gas Company is penalized—not for failure to exercise reasonable care, because there is an express finding of no negligence (page 137)—but for failure to do the impossible. It would be *possible* for railroad companies to pile up equipment so as to meet sudden demands. It would be expensive and unreasonable, but it would be possible. It is *not possible* for a natural gas company to supply more gas than nature produces. The Corporation Commission may make an order penalizing it for not doing so, but that does not produce the gas, and a penalty cannot be imposed for a failure to do that which it is impossible to do.

This question has arisen on substantially the same facts in only one case, and in that Judge VAN VALKENBURG held that an effort to penalize the gas company for failing to deliver gas where it could not procure it was void because "it is powerless to compel the forces of nature."

—*Kansas City Gas Co. v. Kansas City*, 198 Fed. 500, 519.

- (d) *The order is void because being a judicial order the relief granted was not within the issues; was not prayed for; was not supported by proof, and therefore, was made without notice to the company.*

In the statement of the case, we have reviewed at length the relief prayed by the complainants and have pointed out that the Commission denied every feature of the relief sought.

We have also pointed out that certain questions were raised at the hearing without being supported by formal pleadings, and that these were likewise decided in favor of the Gas Company. The relief granted by the Commission was not sought by the complainants and was not made an issue during the trial. Under such circumstances, the granting of such relief was invalid.

In *Oregon R. R. & N. Co. v. Fairchild*, 224 U. S. 510, it is said at page 525:

“The defendant insists, however, that, no matter how complete the right to be heard before the Commission, the statute having denied all other opportunity for testing the validity of the order in the state courts, furnished an utterly inadequate review because, *as the carrier could not anticipate what decision would be made, it was unjust to require it to produce evidence, to show in advance the unreasonableness of an order, the terms of which were not known.* From this it argues that the statute was unconstitutional in so far as it prevented the court from receiving competent and non-cumulative testimony tending to prove that there was no

public necessity for making the track connection and that the order was void.

“This position would be true if the defendant had not been put on notice as to what order was asked for and then given ample opportunity to show that it would be unjust or unreasonable to grant it. In this case, and under the statute, it was given such notice. The complaint alleged that some of the towns were important shipping points and that at all of them there was a public necessity that the roads should be connected. The defendant denied each of these allegations. The hearing, both on the law and the facts, was necessarily limited to that issue. There could have been no valid order which was broader than that claim.”

Respectfully submitted,

C. B. AMES,

Attorney for Plaintiff in Error.

AMES, CHAMBERS,

LOWE & RICHARDSON,

Of Counsel.

Office Supreme Court, U. S.

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No. **37**

IN THE
Supreme Court of the United States
OCTOBER TERM, 1920

OKLAHOMA NATURAL GAS COMPANY,
Plaintiff in Error.

VERSUS

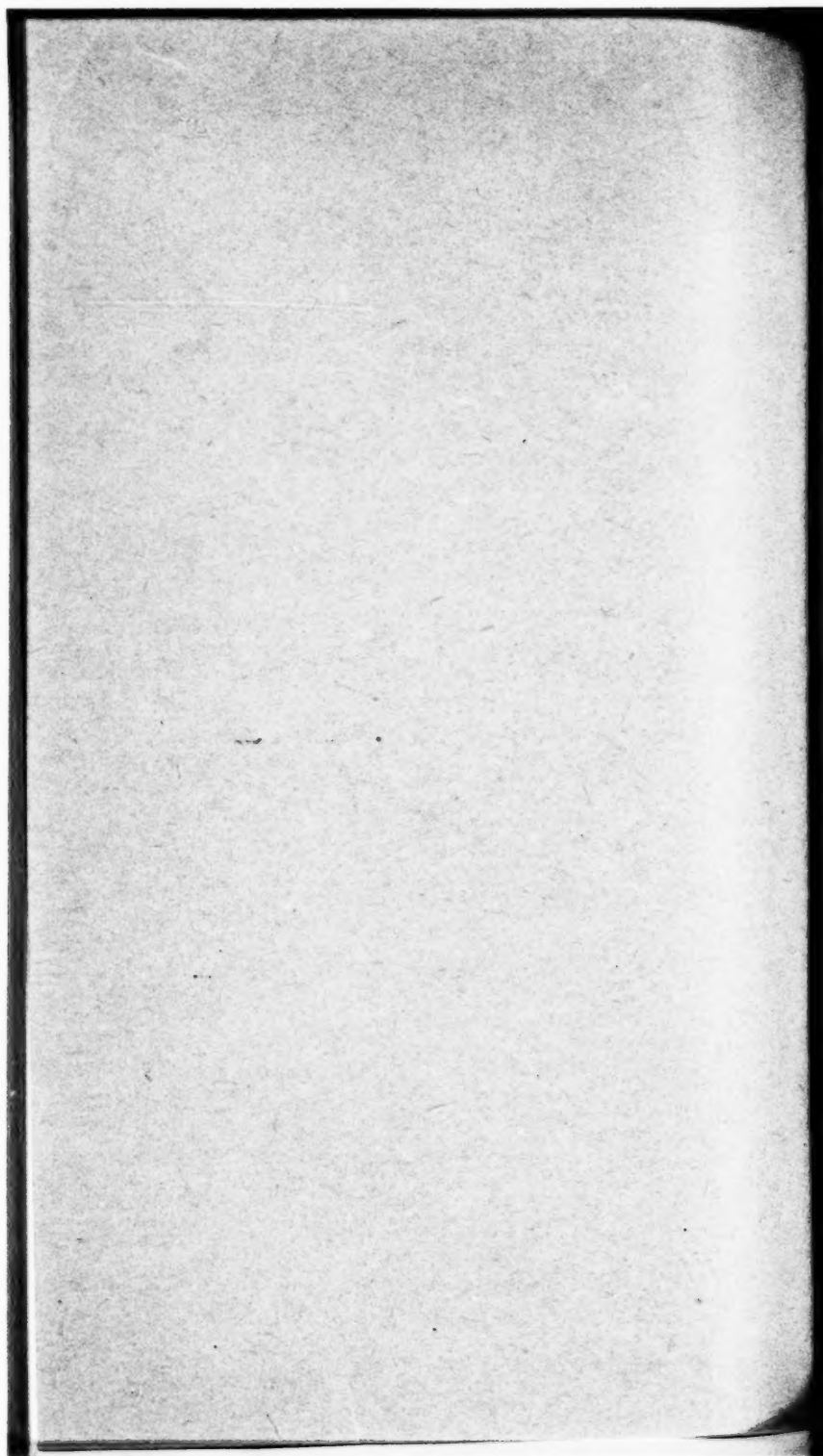
THE STATE OF OKLAHOMA, ET AL.,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

Statement and Brief of Defendants in Error

S. P. FREELING,
Attorney General for Oklahoma.

CHARLES H. RUTH,
Attorneys for Defendants in Error.



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IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1920.

No. 312

OKLAHOMA NATURAL GAS COMPANY,
Plaintiff in Error.

vs.

THE STATE OF OKLAHOMA, ET AL.,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

STATEMENT AND BRIEF OF THE DEFENDANT IN
ERROR.

Counsel for the Plaintiff in Error in their Brief devote more than half of the same to "Basic facts of the Natural Gas industry; that it is a failing resource; that it is not reproduced by nature," and kindred topics having no bearing whatsoever upon the question to be considered by this Court.

To our minds the only question properly presented for this Court's consideration, is, "did the order of the Corporation Commission, afterwards sustained by the Supreme Court of Oklahoma, requir

ing the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company to rebate or pay back to the consumers in Oklahoma City certain moneys extorted from the said customers for inadequate service, deprive the said companies of their property without due process of law, as contemplated by the 14th Amendment to the Constitution of the United States." This action was first instituted before the Corporation Commission of the state of Oklahoma, by more than 12,000 residents of Oklahoma City, being consumers of natural gas. Relief was sought from unbearable conditions then existing and imposed upon the citizens by the Oklahoma Gas & Electric Company, which enjoyed a franchise from the citizens of said city.

It will be borne in mind that the Corporation Commission was created wholly by the people of the state and given certain powers by the state constitution, which powers might be enlarged by legislative enactment in matters wholly domestic.

The gas companies herein mentioned sprung into being through the laws of the state of Oklahoma, and the Oklahoma Gas & Electric Company was granted a franchise to lay its pipes and erect its wires under and over the streets, avenues and alleys of Oklahoma City, subject to certain restrictions, and was at the time of the filing of this complaint, to-wit: 1917, acting under its franchise granted in 1909, after the erection of the territory into a state and after the adoption of the constitution creating the Corporation Commission, and such

company was subject to all laws of the state, including the laws, duties and powers of the Corporation Commission. In connection with the time of its incorporation, we direct the Court's attention to the testimony of W. R. Molinard, found on page 55 of the Transcript of Record.

BY MR. RUTH—

Q. State your name.

A. W. R. Molinard.

Q. What position do you hold with the Oklahoma Gas & Electric Company?

A. I am the Manager.

Q. How long have you been Manager of the Oklahoma Gas & Electric Company?

A. Ever since it was incorporated in 1909.

Section 18 of Article 9 of the constitution of the state of Oklahoma provides among other things, as follows:

“The Corporation Commission shall have the power and authority and be charged with the duty of supervising and regulating and controlling all transmission and transportation companies doing business in this state in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discriminations and EXTORTIONS by such companies.”

The same section further provides:

“The Commission may be vested with such additional powers and charged with such other

duties not inconsistent with the constitution as may be prescribed by law, in connection with the..... regulation or control of corporations, or with the prescribing of rates and charges to be observed in the conduct of any business where the state has the right to prescribe the rates and charges in connection therewith."

Section 20 of Article 9 of the state constitution, authorizes appeals from the Orders of the Commission to the Supreme Court of the state, and among other provisions, includes the following:

"The legislature may also by general laws provide for appeals from any other action of the Commission to the Supreme Court."

Section 22 of Article 9 of the state constitution provides for the certification of the facts and evidence by the chairman of the Commission to the Supreme Court with a statement of the reasons upon which the transaction of the Commission was based, the section containing also this express provision:

"The Supreme Court shall have jurisdiction upon such appeal to consider and determine the reasonableness and justness of the action of the Commission appealed from, as well as any other matter arising from such appeal: Provided, however, that the act of the Commission appealed from, shall be regarded as *prima facie*, just, reasonable and correct; but the court may, when it deems necessary, in the interest of justice, remand to the Commission any case pending on appeal, and require the same to be further investigated by the Commission, etc."

Under the authority of these constitutional provisions, the legislature enacted Chapter 93 of the Session Laws, 1913, extending the jurisdiction of the Commission, the title to which is as follows:

“AN ACT TO EXTEND THE JURISDICTION OF THE CORPORATION COMMISSION OVER THE RATES, CHARGES, SERVICES AND PRACTICES OF WATER, HEAT, LIGHT AND POWER COMPANIES, AND TO GIVE SAID COMMISSION GENERAL SUPERVISION OVER SUCH UTILITIES, AND DECLARING AN EMERGENCY.”

Sections 2, 3 and 5 of said act are as follows:

“Section 2. The Commissioners shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations affecting the services, operation and management and conduct of their business; shall inquire into the management and the business thereof, and the method in which the same is conducted. It shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their compliance with the provisions of this act, and with the constitution and laws of this state and with the orders of the Commission.”

“Section 3. In addition to the powers enumerated, specified, mentioned or indicated in this act, the Commission shall have all additional implied and incidental powers which may be proper and necessary to carry out, perform and execute all powers herein enumerated, specified, mentioned or indicated and to punish as for contempt such corporation, association, company or individual, their trustees, lessees, receivers, successors and assigns, for the disobedience of its order in the manner provided for punishment of transportation and transmission companies, by the constitution and laws of this state.”

“Section 5. The Commissioners may from time to time, adopt or promulgate such orders, rules, regulations or requirements relative to investigations, inspections, tests, audits and valuations of the plants and properties, relative to the inspections and tests of meters as in its judgment may be necessary and proper; provided that under the provisions of this act, any public utility, corporation, association, company, individual, their trustees, lessees, or receivers, successors, or assigns may appeal from any order or finding or judgment of the Corporation Commission as provided by law in cases tried and heard before said Commission of transportation and transmission companies.”

From these constitutional and statutory provisions and the decisions hereinafter cited, it will be apparent that the plaintiff in error and kindred corporations are brought under the control and operation of the laws applicable to transportation and transmission companies.

ARGUMENT AND AUTHORITIES.

We most earnestly urge that there is abundant evidence in support of the order, findings and holding of the Commission requiring deduction on the basis of variations in gas pressure, aside from the requirement of Section 22, Article 9 of the constitution that "The action of the Commission appealed from shall be regarded as *prima facie*, just, reasonable and correct."

In support of our contention that the evidence abundantly provides that the order was based upon sufficient competent evidence, we first direct the attention of the Court to the testimony of the witness Gray, at page 44, which shows that during the period of December 7 to December 14, 1917, the temperature ranged from 9 degrees above to 4 degrees above zero, and that in various parts of Oklahoma City (page 45), there was absolutely no flow of gas, and that in the eastern and southern parts of the city, the flow of gas was very low and in other places the gas was entirely out, and that there was much suffering in the families of consumers; that in some of the schools the attendance had fallen off 25% because of the gas shortage; that the temperature was not unusual for winter in Oklahoma; that the temperature some winters was below zero and many Decembers had been considerably colder, and the December of 1917 was not unusually cold compared with other Decembers (Record, page 46).

Witness Kunderer at page 49 of the Record, testifies that he operates a large restaurant in the business part of the city, and feeds on an average of 1,200 people per day; that he managed to prepare meals on the 7th of December with the low gas pressure; on the following day it was necessary to close his business although located on the principal thoroughfare of Oklahoma City. Page 49 and 50 of Record). That he had to remain closed until the following Tuesday; that he did not have enough gas to heat his place of business; that on page 50 he testifies that the winter weather in Oklahoma City had been as cold prior to this and that he has seen the temperature much lower.

On page 51 of the Record, the witness Charles H. Ruth states that he made five tests of gas at his home during the cold period and immediately thereafter; that he had thirteen burners; turned them on full force; went to his meter and made five tests of three minutes each, the small dial indicator making complete revolutions in that time; the gas was low and that he had no heat in his house; the gas burned a blue flame one-half inch high and in the time he watched his meter, the indicator on the small dial revolved twice in three minutes. That a few days following, when the weather had moderated, he repeated the experiment and the flame was four and one-half inches above stove, or about a five and one-half inch flame, and that the meter ran as fast when he had no fire as when he had the five and one-half inch flame.

The witness Donnell testifies at page 53 of the Record, that he is a man of family; maintains a home; is a consumer of gas and has been since the gas company placed gas in the city. That during the period mentioned there was a general shortage, that members of his family and relatives became sick as a result thereof; that his relatives at his house were required to use a kerosene lamp stove, and on page 54 he details the general conditions of shortage of gas and that his wife was required to do the cooking at 4:30 in the morning before the gas disappeared; that during the day there would be a little blue flame and one two or three occasions the gas went out entirely with the burner wide open. The following questions were asked him:

Q. You state the meter was actually running when there was no flame whatsoever?

A. Yes, sir. We had it turned on full blast and couldn't even smell gas.

Q. But the burner was open?

A. Yes, sir.

By MR. RUTH.

The witness, Molinard, on page 55 makes the following statement:—

Q. State your name?

A. W. R. Molinard.

Q. What position, if any, do you occupy with the Oklahoma Gas & Electric Company?

A. I am Manager.

Q. How long have you been Manager of the Oklahoma Gas & Electric Company?

A. Ever since it was incorporated in 1909.

On Page 56 Mr. Molinard states that he never made or attempted to make any contract for supplying gas in Oklahoma City except with the Oklahoma Natural Gas Company. He further states that during the gas shortage he did not make any effort as Manager of the Company to obtain any other supply and further states that during the summer of 1917 he never attempted to make any contract to secure a supply of gas to Oklahoma City regardless whether or not there was a shortage in sight. With relation to the assurance given the people in the summer of 1917 that there would be no gas shortage Mr. Molinard stated that a report was made public by Committee from the Chamber of Commerce, of which he was a member, but says he doesn't recall the exact wording of the letter but there were five or six pages explaining what the conditions were and the best prediction the O. G. & E. Company could make as to the future at that time, and, that his recollection was that there was not a general assurance that there would not be a shortage. It was a prediction and he gave his best prediction, based on the reports received from the field and that the Committee from the Chamber of Commerce relied entirely upon the prediction of the Oklahoma Natural Gas Company without making any independent investigation.

On Page 60—Mr. Molinard says that a thirty pound pressure "up against the town" is necessary in order to carry an adequate supply and that the O. G. & E. Company makes no effort to keep that pressure up to thirty pounds unless the Oklahoma Natural Gas Company voluntarily keeps it up and

that in case of emergency they have no way of meeting it.

On Page 62—He testifies as follows:—

- Q. What effect does that have on the arrow on the dial of the meter?
- A. Gas meters measure volume. There is a little mechanism which expands until it gets the bellows full and when it gets full by mechanical means reverses and discharges and that it will expand, and, he admits it will expand with air the same as gas and if nothing but air is passing through the pipe and through the meter, the meter keeps working.

The following questions were asked Mr. Molinard:—

- Q. Will you tell the Court why it is that when no flame appears on the stove the meter will continue to work?
- A. It don't make any difference whether the gas is ignited or not, if it passes through the meter the meter will work.
- Q. Suppose you open the stop cock wide and the meter continues to work, what causes that?
- A. There is gas going through.
- Q. But it won't burn?
- A. That may or not be on account of having the air adjusted.

On Page 63—Mr. Molinard admits that when a burner will show a flame five and one-half inches high the arrow on the dial rotates the same as when

you can get a flame one-half inch high, and it will rotate as rapidly when you can only obtain a small blue flame one-half inch high as when you have the five and one-half inch flame, and, that is because meters measure volume irrespective of pressure, and, he admits that his Company collects for this on the same basis at all times regardless of whether it will burn or not; that he tries to furnish so many cubic feet of gas and charges for whatever the meter registers.

On Page 64—He admits that if you put a cubic foot of gas into a tight receptacle under thirty pounds of pressure and draw it off until it is down to 5 pounds pressure that you still have your foot of gas and the volume is still as great and still fills the whole receptacle and that the meter would measure volume irrespective of pressure.

On Pages 66 and 67—He admits that if the foot of gas was reduced to one-half ounce pressure that the customer would not receive quantity, but would receive volume; but admits that if you kept the pressure up the people would obtain better service and further admits that he knows of the order of the Corporation Commission requiring all gas companies to make an adequate and suitable provision for adequate service in the way of furnishing gas for domestic purposes, and, states that his Company never made any provision for carrying out that order of the Commission.

On Page 69—He admits they have a belt system entirely around the city and have twenty-nine regu-

lators around the system which regulate the pressure to the city and each regulator takes care of a limited territory reducing the pressure down to from four to six ounces.

On Page 79—Mr. Molinard admits that if there was a low pressure and there was no flame or heat that the amount recorded by the meter would be the same, with the same number of burners at the same distance, and, in response to questions states as follows:—

Q. In one case you would have heat and in the other you would not, how do you account for that?

A. The meter measures volume regardless of pressure.

Q. Where no flame appears there would be no volume, would there?

A. The volume would be the same.

Q. And every customer would pay for the same volume at the two different periods?

A. Yes, sir.

On Page 73—He admits that if there were 960 B T U, or heat units, of natural gas under thirty pounds pressure and the pressure was reduced to a half ounce pressure then the heat units in the gas delivered would only be 1-960th of the original heat units and that if it was reduced to the small fraction of 1-960th that you would still have a cubic foot and his answer was:—

“A cubic foot is a cubic foot no matter under what pressure.”

Q. So you would have the volume but not the heat units?

A. Yes, sir.

On Page 75—Mr. Molinard states that he maintains he can legally ask the customer for what has been measured through meters and then the following question was asked:—

Q. Assuming a meter should show so much and a party sits around a gas stove with no fire, they would not have to pay for something they didn't get, would they?

A. If the meter was recording they were getting gas.

And Mr. Molinard further admits that air you breathe is gas and the meter would turn on air as well as on gas.

Mr. C. R. Burke, an expert for the gas companies, states that the standard pressure is four ounces and that meters are constructed to deliver gas per thousand feet on a basis of four ounce pressure.

Mr. Molinard recalled by Mr. Ames states that meters are adjusted to measure gas at normal four ounce pressure.

From this evidence it is clearly shown that during given periods of December, 1917 and January, 1918, there was no flow of gas—no flame—no heat. That at times of best service the pressure was four ounces or a little better and we are convinced that

adequacy of service is almost wholly dependent upon pressure. The greater the pressure the better the service—that pressure has no effect upon the volume of the gas—and but slightly increases the density and has an almost negligible effect in the matter of increase of heat units. That increase of pressure does, however, materially effect the flow of gas and without pressure there is no flow and that without flow there is no gas—no heat.

Based upon the foregoing, defendants in error respectfully submit that the conclusions holding relative to the deductions, is amply sustained by the evidence and that the order of the Commission is reasonable.

Plaintiffs in error argue that the order is unreasonable and in support of this, argue that there is no franchise, no statute, no order or rule of the Commission requiring gas to be furnished at a given pressure. It also asserts that the order is not based upon any negligence of the gas company; that the commission expressly found that the gas company was without negligence in the conduct of its business. Conceding the correctness of these statements, they in no measure tend to establish the proposition and findings complained of are unreasonable. The fact that there was no negligence on the part of the gas company; that there is no franchise, no statute, no rule of the Commission requiring a given pressure of gas to be maintained in the laterals, is not to be construed as meaning that the legislature and Commission intended that the gas company might main-

tain any pressure desired by the company and that the company might make the same charge under one pressure as under another. But it is clear from the constitutional provisions hereinbefore referred to and the provisions of Chapter 93 of the 1913 Session Laws quoted, that it was the intention of the people, expressed through their law makers in the several enactments mentioned, that the public service corporations should render to the public AN ADEQUATE, REASONABLE AND SUFFICIENT SERVICE IN RETURN FOR THE PRIVILEGES AND RIGHTS GRANTED AND CONFERRED UPON SUCH CORPORATION UNDER ITS FRANCHISE BY THE LAW.

Section 18, Article 9 of the constitution confers powers on the Commission to supervise, regulate and control such corporations in matters relating to the performance of their public duties, and their charges therefor, and of correcting abuses and preventing discriminating and extortion by such companies; and Chapter 93 of the laws of 1913, fixes as to the standard of measure of this public duty on the part of the gas companies, "adequacy of service" and as already noted, the Commission is vested, not only by the constitutional provisions, but as well by the act of 1913, with the power and authority to determine these matters within the limit of the exercise of sound legal discretion, and the constitution adds the force and power of its presumption that the findings and orders of the Commission are "*prima facie*, just, reasonable and correct." Wherein has any evident-

iary matter been suggested to the court to even rebut or overthrow this constitutional presumption?

City of Pawhuska v. Pawhuska Oil & Gas Co., 116 Pac. 1058;

Guthrie Gas Co. v. Board of Education, 166 Pac. 128;

A. T. & S. F. Ry. Co. v. State, 23 Okla. 210

Bearing in mind that ADEQUACY OF SERVICE is the prime consideration under the purview of the law, it is a matter of no moment that no fixed pressure requirement has been made by any law or rule. In the nature of the matter this could not well be done. The omission of the law, however, is favorable to the gas company, since it is required only to meet the conditions that may necessarily arise, and certainly, therefore, it will not be heard to complain because it is not bound by any harsh and fixed statutory rule as to pressure. Under the law, however, it is required that the gas company shall provide and furnish an adequate service, always to be determined, however, in the light of requirements and necessities; a service adequate in July would not be adequate in January.

In harmony with the requiremenst of the statute that the gas service shall be "adequate," the Commission under the authority of this statute, after due notice to all gas companies as required by law, did on March 11, 1916, promulgate Order No. 1028, as follows:—

"It is therefore considered, ordered and adjudged that each and every corporation (men-

tioned in Chapter 93 of laws 1913) supplying natural gas for domestic consumption, or for conveying of gas by pipe lines for delivery, or for furnishing heat, or light with gas, or in any way directly or indirectly, supplying natural gasfor domestic consumption is hereby required to so construct and equip and maintain its pipe lines, mains and distributing systems so as to be at all times able to furnish an adequate supply of gas for domestic consumption and is hereby ordered to furnish and supply at all times an adequate amount of the proper quality for heating, cooking and lighting for domestic consumption."

The absence of negligence does not relieve the company of its duty to furnish an adequate gas service; that no statutory or franchise requirement fixes the pressure to be maintained in its laterals is no ground for exempting the company from the performance of its duty, nor do these considerations warrant the company from making the same charges for all character of service.

Counsel for plaintiff in error insists that it is engaged in selling a commodity—gas; that is in part correct. Under the laws of this state the gas company as a public service corporation, is, in fact, engaged in furnishing an "adequate gas service," regardless of what it may conceive to be the character, nature and limits of its business. If this concern was a corporation engaged in selling coal, or wood, or merchandise, it might be well argued that it should be considered as free from obligations to the public, but it is a corporation of a public character and

therefore is engaged in a business more than of simply selling and delivering a commodity, as is declared in the case of *West v. Kansas Natural Gas Co.*, 227 U. S. 29, cited by plaintiff in error. The principles of law dealing with this public character and consequently public duty and obligation is so well established by our own courts, with all of which this court is so familiar, that a comment thereon, and citation of authorities would serve no good purpose.

The contention of the plaintiff in error, in a condensed form under this assignment, is that because no law requires a given pressure, and that the company was unable to furnish an adequate service, that therefore the order of the Commission making the deductions in charges was unreasonable. This conclusion does not follow, but the conclusion does follow that if as a public service corporation it does not furnish an adequate service, that its charges for the service rendered shall be based upon a maximum compensation therefor upon the basis of adequate service and the charges made accordingly; that is, based upon an efficiency table as was also done in the case of *Nowata County Gas Co. v. the State, et al.*, 177 Pac. 618, where the Supreme Court of the state of Oklahoma held as follows:

“Where a gas company is required by order of the Corporation Commission to furnish an adequate supply of gas for domestic consumption and is allowed to charge the public a maximum rate which is based upon an adequacy of the service rendered, as well as upon the quantity of gas furnished, and it is consequently

shown that this duty of sufficiency is not sustained by the company during certain winter months, the Corporation Commission has power to make an order requiring the company to discount its bills rendered for such months a certain percent, for the purpose of apportioning the maximum rate allowed according to the efficiency of the service rendered, as well as to the quantity of gas furnished, where it is practicable to do so; and where it appears from the findings of fact of the Commission, which are conceded to be correct, that the discount ordered bears a fair relation to the falling off in service, such order will not be disturbed on appeal."

By reference to the matters called to the attention of this court taken in connection with the opinion in the Nowata case and the *prima facie* presumption rule under the constitution, in our judgment makes it clear that the order for deduction was not unreasonable, but was in every respect just, reasonable and correct, and there is no evidence in the record that would warrant a different conclusion—nothing, even, that rebuts the constitutional presumption and this in itself, would sustain the order.

In *A. T. & S. F. Ry. Co. v. State*, 23 Okla. 510, 101 Pac. 262, Justice Williams in speaking of this presumption states that it is "to be overcome only by evidence in the record that clearly rebuts the same." To the same effect is the rule announced by Justice Hayes in the case of *Guthrie Gas Co. v. Board of Education*, 166 Pac. 128.

We therefore respectfully submit that under the

evidence and the law, the order for deductions as made by the Commission was in all respects reasonable and not subject to the objection made thereto by plaintiff.

It is further contended by the plaintiffs in error that "by this order gas is taken from the Company and given to it's customers in some cases for no compensation and in others for admitably inadequate compensation." This denies due process of law and quoted *Davidson v. New Orleans*, 96 U. S. 97 as follows:—

"It seems to us that a statute which declares in terms and without more than a full and exclusive title to a described piece of land, which is now in 'A' shall be and is hereby vested in 'B' would, if effectual deprive 'A' of his property without due process of law, within the meaning of the constitutional provision."

We have already quoted from the case just cited and if the citations of the plaintiffs in error are no closer in point than the one just referred to as compared with the actual holding of the Court, speaking through Justice Miller, we deem it a waste of time to comment further upon their citations under this particular head.

Plaintiffs in error further state under this head that (by this order a penalty is imposed upon the Company for failure to do that which is impossible), it is unconstitutional to impose penalties for failure to do that which is unreasonable. Much more is this true of that which is impossible, and in support

thereof they cite as their leading authority the *Southwestern Telephone & Telegraph Company v. Danaher*, 238 U. S. 482. This opinion, it will be recalled, was by Mr. Justice Van Devanter and has no bearing upon this case as that was simply a case where Mrs. Danaher was in arrears for the telephone service rendered her and the Company refused further services until the bill was paid and the Court very properly held that she could not recover damages as a penalty for their failure to furnish further service. Plaintiffs in error cite as a leading case, in support of the last proposition laid down, the case of *Houston & Texas Central Railway Company v. Mayes*, 201 U. S. 321 and in that case they quote from the body of the opinion, while the only question there was the right of the state to enact a statute penalizing the failure of a railway company to furnish cars to a shipper within a certain number of days after the latter's requisition in writing in the sum of Twenty-five Dollars (\$25.00) per day for each car not so furnished. In the *St. Louis, Iron Mountain & Southern Ry. Co. v. Winn*, 224 U. S. 354, cited by counsel for plaintiff in error was a case where they attempted to exact double liability and an attorney's fee under the Arkansas laws for a railway company refusing to pay within thirty (30) days an excessive demand for the killing of live stock by one of it's trains and held that this was taking the company's property without due process of law.

Without further comment on the cases cited by the plaintiffs in error under this head it is readily seen that these cases have no application to the case

at bar for the reason that the Corporation Commission of Oklahoma made no effort to penalize the company but simply, under the power granted them by the Constitution of Oklahoma, refused to permit the plaintiffs in error to retain money that had come into it's possession and for which no services had been rendered. Plaintiffs in error further, under this head, states as follows:—

“This order is void because being a judicial order the relief granted was not within the issues and was not prayed for; was not supported by proof and therefore was made without notice to the company.”

Certainly the plaintiffs in error cannot complain that it had no notice; that it did not have it's day in court, or did not know the evidence to be introduced in time to meet and refute the same. From the record (P. 24) we find the taking of testimony was commenced on January 2, 1918 and the witnesses on that date testified their respective meters continued to register as readily as ever, yet no gas was discoverable; could not be made to burn and in some instances a small blue flame one-half inch high was obtained, while under normal conditions crarying a four-ounce pressure that same burner produced a flame five and one-half inches high.

On this first day Mr. Molinard, Manager of the Company, testified that the meters measured by volume regardless of pressure and even though you could not produce a flame, the fact that the meter continued to register indicated gas was coming

through the orifice and that the air we breathe is gas and the meter registers on air.

The cause was continued; testimony was introduced from day to day until January 27th and counsel will not seriously charge us with not having knowledge or notice of what we were trying to prove.

The Supreme Court of Oklahoma in *Muskogee Gas & Electric Company v. State, et al.*, reported in the 186th Pacific, page 730, holds as follows:—

"1st. The Corporation Commission was created and endowed with legislative, executive, administrative and judicial powers.

"2nd. The legislative power of the Corporation over rates is not confined to prescribing permanent rates but may be exercised as the exigencies of the times and changing conditions demand.

"3rd. The power of the Corporation Commission to prescribe rates is not limited to complaints filed, but is inherent in the authority delegated to the Commission, and the only question of notice that can be raised by public utility is that prescribed for notice and hearing for the utility itself.

"4th. The inquiry of a board of the character of the Corporation Commission should not be too narrowly constrained by technical rules as to the admissability of evidence. This function is largely one of investigation, and it should not be hampered in making inquiry pertaining to rates of a public utility by those narrow rules which prevail in trials at common law."

In the plaintiff in error's fifth assignment of error, which we conceive to be the only question before this court, they take the position that the order of the Commission as affirmed by the Supreme Court, takes from the plaintiff in error its property without due process of law.

That the effect of the order is to take property without due process of law, and therefore in violation of the 14th amendment to the constitution of the United States, we do not concede.

The first reason is that no property has been taken from the plaintiff in error by the order for deductions; the deductions are made upon the theory that to that extent no service was rendered—no property was taken, and second, for the reason that if the effect of the order was to take any property (gas) or service from the company, it was so done by due process of law.

The Commission is vested by the constitution with authority to "supervise, regulate and control in all matters relating to the performance of the corporation's public duties, of correcting abuses and preventing extortions (Section 18, Article 9, Constitution), and to make such rules and regulations and enforce such requirements as may be necessary to prevent the same (Section 18, Article 9, constitution) and shall have all implied and incidental powers which may be proper and necessary to carry out, perform and execute all powers herein enumerated, specified, mentioned or indicated", (Sections 2, 3 and

5, Chapter 93, Laws 1913) and with authority to appeal therefrom.

The Corporation Commission is a legally constituted tribunal having jurisdiction over this class of cases—provision is made for hearing and trial upon notice—for hearing evidence requiring an attendance of witnesses, production of records, administering of oaths, to punish for cotnempt and to enforce all of its lawful orders, in fact, in this respect, Section 19 of Article 9 of the constitution clothes the Commission with the powers of court of record, and if before such tribunal a hearing is had pursuant to the mode of procedure applicable to such cases, the due process of law requirement has been met.

Wilhite v. Cruce, 172 Pac. 962;

In re Maught, 1st Okla. Cr. 526.

In *Davidson v. New Orleans*, 16 United States, 97 and 105—24 L. Ed. 616, Justice Miller, speaking for the court, says:

“It is not possible to hold that a party has without due process of law been deprived of his property, when, as regards the issues affecting it, he has by the laws of the state a fair trial in a court of justice, according to the modes of proceeding applicable to such a case.”

In *ex parte Converse*, 137 United States 524—11 Sup. Ct. 191, Justice Fuller is discussing the “due process” clause of the federal constitution as affecting the determination of a state court, says: “But

the state cannot be deemed guilty of a violation of the constitution of the United States because of a decision even if erroneous, of its highest court, while acting within its jurisdiction.

Paralleling the opinion of Mr. Chief Justice Fuller herein this Court held:—

“The Courts should not enjoin the enforcement of a municipal ordinance fixing maximum water rates on the ground that such ordinance is invalid under U. S. Const. 14th Amendment, as confiscatory, unless the confiscation is clearly apparent.”

“A deduction for depreciation from age and use must be made from the estimated cost of reproducing a waterworks plant when determining the present value of the tangible property for the purpose of testing the reasonableness of the rates fixed by a municipal ordinance.”

Knorrville v. Knorrville Water Company,
212 U. S. 1.

“The case must be a clear one before the courts should be asked to interfere by injunction with state legislation regulating gas rates, in advance of any actual experience of the practical result of such rates.

Wilcox v. Consolidated Gas Company of
N. Y., 212 U. S. 19.

“A railway company is not deprived of its property without due process of law by Ark Laws 1907, No. 116, penalizing the operation of freight trains of more than twenty-five cars

with less than three brakemen, regardless of any equipment with automatic couplers and air brakes.

Chicago, Rock Island & Pacific Ry. Co. v. Arkansas, 219 U. S. 453.

“Revised Statutes of Maine, Ch. 57, Sec. 5 and 6, as amended by Act. 1885, Ch. 332, providing a penalty for refusal of mills to accept grain for grinding and after charging an excessive toll, is not unconstitutional as being an invasion of the private right of enjoyment of property.”

State v. Edwards, 86 Maine 102-29th Atlantic 947.

“The 14th Amendment does not limit the subjects in relation to which the police power of the State may be exercised for the protection of its citizens.”

Minneapolis & St. Louis Ry. Co. v. Beckwith, 129 U. S. 26.

In the outset of the plaintiff in error's fifth assignment, which we are now discussing, he says:

“A natural gas company is under no duty to supply gas which does not exist.”

Wyman on public corporations, Sections 271 and 652. In Section 271, the author says:

“Where the supply that is offered has a natural limitation, it will usually be found that the profession (to serve) is limited to the exploitation of that supply. Thus a company which undertakes to supply natural gas from a

proven field cannot be held liable for the failure of the supply to meet the demands of the community."

Counsel further cites Section 652, wherein the same author says:

"In irrigation we have a typical case of natural limitation. When the flow of a stream is diverted by irrigation works, the profession of the managing company may fairly be said to be confined to the water that may properly be appropriated. It is consequently under no duty to provide other sources of supply even against recurrent drouth, as its obligation is limited to the proper diversion of the appropriated water. Only while it has available water is it bound to supply applicants."

Replying to the first quotation from Wyman, and comparing it with the case at bar, we say that had plaintiff in error exhausted its field of gas and had made no charge for gas, no cause for action could have arisen, but it is for the extortion of money for gas never furnished upon which this action is based.

The second contention from Wyman is not applicable for it does not contemplate the payment for water not furnished and the principle there laid down would be analogous had the customers been able to stand in the irrigation ditch without wetting his feet and without being able to see, hear, taste or smell water, while the water meter registered the same volume as it did at flood, as the evidence in the case at bar discloses were the conditions surrounding the gas meter.

Counsel might have further quoted Wyman to the following effect in his work on public service corporations at pages 663 and 664, wherein he says:

“A public service corporation must foresee any demand for service which is reasonably probable.”

And we contend that if it was reasonably probable that temperatures such as were found to prevail during said periods did in fact prevail, then it becomes the duty of the gas company to make suitable and proper provisions to meet the condition to do have such equipment as to meet the requirement.

Mr. Wyman states at page 790:

“It is the basis of the duty of public service corporations to supply a sufficient and adequate equipment.”

“The filing of a complaint is not essential to give the Commission power to correct abuses.” *St. Louis & San Francisco Ry. Co. v. Miller* (Okla.) 133 Pac. 1047; *St. Louis & San Francisco Ry. Co. v. Williams*, 10 Pac. 428; 25 Okla. 662; *Hine v. Waddington*, 111 Pac. 543—27 Okla. 285; *Muskogee Gas & Electric Co. v. State, et al.*, (Okla.) 186 Pac. 730.

Plaintiff in error states “The court erroneously states that this is a legislative act and cites in support thereof *Prentiss v. Atlantic Coast Line Co.*, 211 U. S. 210; *Ross v. Oregon* 227, 150. These cases we contend are not in point. The first in which the opinion was delivered by Mr. Justice Holmes, dis-

closes that this was a case wherein injunctive relief against railway passenger rates as fixed by the state Corporation Commission may be granted by a federal court if such rates are confiscatory, and in no manner has aught to do with the issue herein involved; while the second case in which the opinion was delivered by Mr. Justice Van Devanter was a criminal case coming up from the state of Oregon and has no more reference to the question now before the court than the former case just referred to. For in the case at bar the Corporation Commission having established a rate for each one thousand feet of gas actually furnished, denies to the company the right to extort money upon a meter reading when according to all the evidence the customer could neither see, hear, taste, smell or burn any commodity that might be coming through the burner while the said meter kept diligently at its task of ticking off thousands of feet of what the company deemed gas, for on page 75 of the record Mr. Molinard, manager of the company, blandly answers that the air you breathe is gas and the meter will continue to turn on air and that his company collects for whatever the meter registers. It is admitted and in evidence that the plaintiffs in error require consumers to make a cash deposit with the company equal to the estimated monthly bill before installing a meter; that at the expiration of the month they will turn off the gas; apply the customer's advance deposit on the bill but if the actual bill rendered, is settled in full such deposit is still retained by them against future contingency and the customer is charged an additional

dollar for the mere physical act on the part of the company in sticking a key in a hole in the ground and turning on the gas, and unless the consumer submits to the highest form of extortion, he or she must suffer the discomfort of a fireless home with the thermometer registering about zero. It was to safeguard a suffering people against this and other species of extortion that the people wrote into their constitution as a part of the powers and duties of the corporation commission, Section 18, Article 9, heretofore referred to. Had it not been for the incorporation of these wise provisions, the people would have no redress.

We respectfully submit in conclusion that the order was a legislative act, that under the decisions of the Supreme Court of Oklahoma the order was *prima facie*, just and reasonable, that the plaintiffs in error had due notice and attended all the hearings before the Commission, and offered no evidence to rebut that offered by the complainants, but admitted repeatedly, that there was a gas shortage during the period in question, but insisted they had a right to collect at the established rate, for whatever the face of the meter registered in feet, regardless of whether heat or flame was produced by the force causing the meter to register.

Respectfully submitted,

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Attorney General for Oklahoma.

CHARLES H. RUTH,

Attorneys for Defendants in Error.

MAR 3

WM. R. STANLEY

No. **37**

In The Supreme Court of the United States.

OCTOBER TERM, 1920

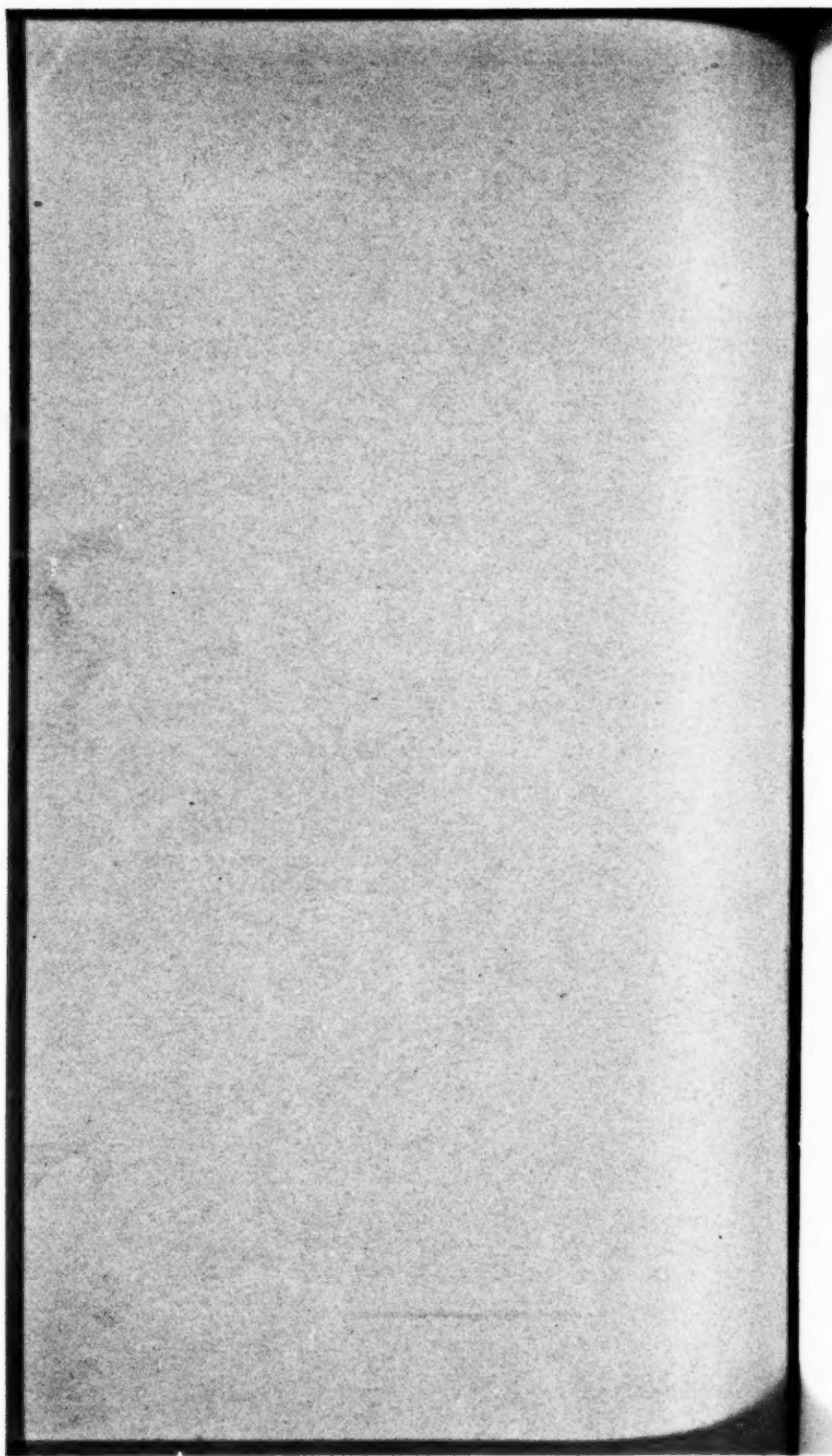
OKLAHOMA NATURAL GAS COMPANY,
Plaintiff in Error,
vs.

THE STATE OF OKLAHOMA, ET AL.,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE
STATE OF OKLAHOMA

SUPPLEMENTAL BRIEF OF DEFENDANTS
IN ERROR

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In The Supreme Court of the United States.

No. 312

OCTOBER TERM, 1920

OKLAHOMA NATURAL GAS COMPANY,
Plaintiff in Error,

vs.

THE STATE OF OKLAHOMA, ET AL.,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE
STATE OF OKLAHOMA

SUPPLEMENTAL BRIEF OF DEFENDANTS IN ERROR

This is an action brought to this Court upon writ of error from the Supreme Court of the State of Oklahoma, alleging error in the last named court in affirming the order and judgment of the Corporation

Commission of the State of Oklahoma, requiring the Oklahoma Natural and the Oklahoma Gas & Electric Company to conform to that order to the end that certain abuses might be corrected and certain extortions prevented.

So far as affects this particular case, the facts are that in the winter of 1917-18, as shown by the record herein, there was a serious natural gas shortage in Oklahoma City and great suffering resulted therefrom.

The gas company enjoyed a list of approximately fourteen thousand (14,000) subscribers to their service; that is in a city of one hundred thousand (100,000) population, fourteen thousand (14,000) meters had been installed. During this shortage, approximately twelve thousand (12,000) persons describing themselves as users of natural gas and directly affected by the shortage, filed a complaint with the Corporation Commission of Oklahoma praying for certain specific relief and for general relief.

This Corporation Commission is a body created by the Constitution of Oklahoma, with wide powers in relation to the control of public service corporations within the state relating to their dealings with the public in purely local or domestic affairs. The powers of this Commission are defined in Article 9 of the Constitution, and in Section 18 thereof it is provided that

they shall have the power, and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in the state in all matters relating to the performance of their duties and their charges therefor, and of correcting abuses and preventing unjust discriminations and extortions by such companies.

The same section provides that by act of the legislature the Corporation Commission may be vested with certain other powers not inconsistent with the Constitution of the state.

Section 20 of Article 9 authorizes appeals from all orders of the Corporation Commission to the Supreme Court of the state.

Section 22 of Article 9 of the Constitution of the State of Oklahoma provides for a certification of the facts and evidence by the chairman of the Corporation Commission to the Supreme Court of the state with the reasons upon which the transaction of the Commission was based, as follows:

"The Supreme Court shall have jurisdiction upon such appeal to consider and determine the reasonableness and justness of the action of the Commission appealed from, as well as any other matter arising upon such appeal; provided, however, that the act of the Commission appealed from shall be regarded as *prima facie*, just, reasonable

and correct, but the court may, when it deems necessary in the interest of justice, remand to the Commission any case pending on appeal and require the same to be further investigated by the Commission, etc."

By the foregoing Section 18 it will be noted that the Commission is vested with specific powers to correct abuses and prevent unjust discriminations and extortions.

By virtue of the power vested in the Commission it did in March, 1916, issue Order No. 1028, requiring natural gas companies furnishing light, heat or power to construct their lines so as to at all times furnish an adequate supply for heating and cooking for domestic consumption, and from time to time the Commission fixed the rates to be charged by the companies based upon an adequate supply of gas.

In 1917 and 1918 the supply being wholly inadequate and insufficient, the citizens filed their complaint with the Corporation Commission, which Commission, after hearing all the evidence, determined that the companies had collected for gas which they had not delivered, and as the rate established was based upon an adequate supply and as the companies had failed in this particular, the said companies were entitled only to such money as might be found to be due them for gas furnished under normal pressure, to-wit: four

ounces, it being shown to the Commission by the experts for the companies that a four-ounce pressure was necessary to be maintained to furnish an adequate supply and it being admitted by the company that this pressure had not been maintained during said periods of the winter 1917-1918.

It may be stated here in this connection that the record discloses the fact that before installing a meter the company requires the applicant for a meter to deposit a sum for one and one-half months service in advance of the installation to insure the company against loss. They, therefore, at all times have money of the customer in their treasury to insure them against one and one-half months service.

Under such an arrangement the customer has already paid for a six weeks supply of gas before he has used it, and if the customer refuses to pay an extortionate charge, to pay for gas he does not use or is not supplied him, the company has but to transfer any amount charged against him from the credit to the debit side of the ledger. By reference to the transcript of the record it will be noted that the manager of the Oklahoma Gas & Electric Company, and other witnesses for the company, testified that a four ounce pressure was necessary to furnish an adequate supply of gas for domestic consumption, and when the pressure

fell below four ounces, it was inadequate, and the same witnesses testified that all meters were constructed, set or gauged upon the four ounce basis.

The Oklahoma Gas & Electric Company had installed thirty or more pressure gauge stations in various parts of the city, the city being divided into zones or districts, and these gaugers marked with a clock-like mechanism with needle and dial arrangement the pressure in that particular zone, and as the pressure was raised or lowered, the needle traveled toward the inner or outward edge of the dial, tracing a distinct line thereon. These dials did record the pressure each and every hour of each and every day for a period of one month so that upon the removal of the dial and the insertion of new dials, it could be seen at a glance what the pressure was at any hour of any day during the month, and the average pressure could be readily computed for a given period. It was established by the evidence and not controverted, that there was an inadequate supply of gas furnished during a period in December, 1917, and January, 1918, and at certain periods in certain zones or districts there was a total absence of pressure, while in other districts the pressure averaged one, two, three and four ounces, and notwithstanding the low pressure or absence of pressure, the gas bills were as great and in some instances greater in the districts of low pressure

or no pressure than were the bills for the months previous when there was an average pressure of four ounces over the whole city, and the subscriber or consumer was subjected to this extortionate charge and required to pay the same or have the service discontinued, and was charged the sum of one (\$1.00) dollar for the mere physical act of turning on the gas by an employe of the company after the consumer had been frozen into submission to this extortion, notwithstanding the company had on deposit from each consumer sufficient cash to pay for a six weeks supply in advance.

It was further established by the uncontroverted testimony, that in certain zones during this period of inadequate supply, that although the gas burner was opened and a lighted match applied thereto, no flame could be produced, yet the meter registered just the same, to the discomfiture of the customer and to the comfort and profit of the company. This fact is established by the testimony of the manager of the company, who testifies on page 63 of the record that the meter registers by volume irrespective of pressure and registers as rapidly when you cannot obtain a flame, or as testified to by one of the witnesses that he could get a flame but one-half inch high as it does when you could get a flame five and one-half inches high from the same burner under a four ounce pressure, and by

the unconverted testimony of Judge Donnell, his meter registered just as rapidly when he could not produce a flame, when he could not even smell gas coming through the alleged burner as it registered when he received an adequate supply.

It being admitted by the plaintiff in error that this shortage occurred and no testimony being introduced or offered that the consumer's bill had been reduced in ratio with the inadequacy of the service, the Corporation Commission in consideration of all the evidence, required the Oklahoma Gas & Electric Company to produce all its pressure gauge station dials for the period of the inadequate supply; and the adequacy of the service rendered computed therefrom, and in those zones where the pressure was four ounces, the Commission determined the company was entitled to full payment; and where the pressure fell below four ounces and down to three ounces, the company was entitled to but seventy-five percent of the face of their bill; and where the meter registered less than three ounces and down to two ounces, the company was entitled to fifty percent; and from two ounces to one ounce they were entitled to but twenty-five percent on the basis that they were only rendering twenty-five percent efficiency; and where the dial at the pressure gauge station showed an average of less than one ounce—in the zone where Justice Donnell lived and

where no flame could be produced and where even the smell of gas could not be detected—the company could make no charge for service on the theory that if the pressure was less than one ounce at the station, the further the pipes extended from the station the less the pressure would be and no service was given; and to prevent these extortionate charges, the Corporation Commission decided that the threat by the company to discontinue service until these unjust bills were paid, constituted extortion, which the Commission was, under the Constitution, empowered to prevent, and so order the company to rebate to the consumers in these various zones the sums of their extortion.

This, the company claims is taking their property without due process of law, while the defendant in error claims it is simply making the company disgorge and make restitution of the sums extorted in payment for a commodity never furnished.

Another instance of the inadequacy of the supply furnished lays in the testimony of the manager of the corporation as to the number of B. T. U. or British Thermol Unites or heat units. He testifies that if you take a cubic foot of gas under thirty-pound pressure and attach a meter, also a pressure gauge, and then permit the gas to flow until the pressure has been reduced to fifteen pounds, onehalf of the B. T. U's.

have escaped; and when it is reduced to five pounds, five-sixths of the B. T. U's. have escaped; and so the United States Bureau of Mines having issued its circular, set forth in the record, showing natural gas in Oklahoma to contain approximately 960 B. T. U. per cubic foot at a four-ounce pressure, when it is reduced to one-ounce pressure it has lost seventy-five percent of its heat units or heat value; and when it will not ignite, it has lost all its B. T. U. or heat units and the company is charging for that which it is not delivering, and by appropriating the people's money already in its possession and threatening to turn off the gas until the bill is paid and charge the consumer one (\$1.00) dollar to turn it on again, they are certainly guilty of one of the abuses of the Constitution designed to prevent through the Corporation Commission, and guilty of extortion as contemplated when the Constitution conferred power upon the Commission to regulate public service corporations and prevent extortions.

Counsel for plaintiff in error says in his brief that all relief prayed for was denied and relief not prayed for was granted, to-wit, a rebate. In reply to this we state that the supplemental complaint prays in addition to specific relief granted, that the "Company be dealt with as the facts justify." Counsel further claims the plaintiff in error had no notice of the fact that such relief as a rebate would be granted, but the

fact remains that there was a prayer for general relief, and the plaintiff in error received its notice and entered their appearances and filed their answers. The record shows this hearing was commenced on February 2 and testimony taken from day to day until February 27 or 28, 1918, and on the first day of the hearing testimony was offered by the complainants showing the meter was diligently recording but that no flame or heat could be secured from the elements or commodities causing such record to be made, and no effort was made by the plaintiff in error to controvert this testimony.

Under the laws of this state no formal pleading is necessary before the Corporation Commission, in fact, it does not even have to wait upon complaint, but of its own motion may cite a corporation before it and give such relief as the facts justify. This has been the holding of the Supreme Court of the State of Oklahoma in numerous cases. In *St. Louis & San Francisco Railway Company v. Williams*, 25 Okla. 162; 107 Pac. 428, it is held:

"Its (Corporation Commission) jurisdiction does not depend upon any special form of pleading, the test being not the relief prayed for, but that granted. In fact it is not essential that any petition be filed, but that notice shall be had."

In *Hines v. Waddleton*, 27 Okla. 28; 111 Pac. 543, held:

"In proceedings before the Corporation Commission no strictness of pleading is required."

The above cited case was by the court remanded to the Corporation Commission with instructions "to proceed to make such investigation of the evidence introduced at the former hearing and all other evidence that may hereafter be offered by any party in interest as is necessary to make a finding of facts." This was in conformity with the constitutional provision relative to remanding, and in the instant case, had the plaintiff in error believed it had been deprived of an opportunity to controvert the evidence, and had believed it could have produced evidence controverting the evidence of meter registering just as rapidly when no flame could be produced as when they had a five and one-half (5½) inch flame, the court would have upon request remanded the cause for further hearing.

In *Chicago, Indianapolis & Louisville Railway Company v. Railway Commission*, 39 Ind. App. 345; 79 N. E. 927, it was held:

"No strictness of pleading is required by the act and both the complaint filed with the Commission and the concise written statement filed in this court must be largely construed for the purpose of obtaining a disposition of the matter involved upon their substantial merits."

In *Southern Railway Company v. Railway Commission*, 42 Ind. App. 90; 83 N. E. 721, it was held:

"No strictness in pleading is required in proceedings before the Railway Commission and it is vested with ample power to frame its order as the substantial justice may require, irrespective of the relief asked for in the petition."

This has been the uniform holding by the state supreme courts generally.

We direct this Court's attention to the fact that the Constitution of Oklahoma was adopted in 1907, and with full knowledge of the constitutional powers of the Corporation Commission, the Oklahoma Gas & Electric Company applied to the people of Oklahoma City for a franchise and the people by their votes granted the same. It appears from the record that on March, 1916, the Corporation Commission promulgated Order No. 1028, as follows:

"It is therefore considered, ordered and adjudged that each and every corporation (mentioned in Chapter 93 of the Laws 1913) supplying natural gas for natural consumption, or for conveying of gas by pipe lines for delivery, or for furnishing heat or light with gas, or in any way directly or indirectly supplying natural gas * * * for domestic consumption, is hereby required to construct and equip and maintain its pipe lines, mains and distributing systems so as to be at all times able to furnish an adequate supply of gas for domestic consumption, and is hereby ordered to furnish and supply at all times an adequate amount of the proper quality for heating, cooking and lighting for domestic consumption."

Mr. Molinard, manager of the Oklahoma Gas & Electric Company, testifies that he knew of the order of March, 1916, but wholly disregarded it, and the company made no effort to secure an adequate supply of gas of proper quality, but relied entirely upon the statements of the officers of the Oklahoma Natural, and when the Oklahoma Natural failed to furnish the Oklahoma Gas & Electric Company with an adequate supply of proper quality, the consumer must suffer the consequences.

The Supreme Court of Oklahoma, in *Nowata Gas Company v. State*, 177 Pac. 618, held:

"Where a gas company is required by order of the Corporation Commission to furnish an adequate supply of gas for domestic consumption and is allowed to charge the public a maximum rate which is based upon "*an adequacy of service rendered*," as well as upon the quality of the gas furnished, and it is subsequently shown that this duty of sufficiency is not sustained by the company during said winter months, the Corporation Commission has power to make an order requiring the company to discount its bills rendered for such months, a certain percent, for the purpose of proportioning the maximum rate allowed according to the efficiency of the service rendered, as well as to the quality of gas furnished, where it is practical to do so, and where it appears from the findings of fact of the Corporation Commission, which are conceded to be correct, that the discount ordered bears a fair relation to the falling off in service, such order will not be disturbed on appeal."

Nowhere in the record does it appear that the plaintiff in error ever attempted to show that the service was adequate, or that the quality was of such a nature as to produce heat or flame; in fact, they conceded that a shortage did occur at the times mentioned in the complaint; nor did they at any time attempt to controvert the testimony that the meter operated as rapidly when you could produce no flame, as it did when the supply was adequate under the four-ounce pressure.

Summarized we find the following conditions:

First—The Constitution of Oklahoma provides for a Corporation Commission.

Second—The Constitution of Oklahoma confers power upon the Corporation Commission to correct abuses and prevent unjust discriminations and extortions.

Third—The Oklahoma Gas & Electric Company accepted a franchise with a full knowledge of the constitutional provisions.

Fourth—That there was a shortage of gas in Oklahoma City during the period covered by the record.

Fifth—The people filed a complaint asking for specific and general relief.

Sixth—The company had notice and did appear

before the Corporation Commission, cross-examined witnesses, introduced testimony on its own behalf.

Seventh—The evidence, uncontroverted, was that gas meters registered when no commodity was passing through the meters that might be utilized—no flame or heat could be produced.

Eighth—That a four-ounce pressure is necessary for an adequate supply of gas.

Ninth—That the Corporation Commission had in 1916 by Order No. 1021 directed the public service corporations (gas and electric) to equip their systems to give an adequate supply.

Tenth—That rates were fixed by the Corporation Commission upon the basis of an adequate supply.

Eighteenth—The Oklahoma Gas & Electric Company wholly disregarded this order and made no effort to comply therewith.

Twelfth—The gas company admits the shortage and by the introduction of their own pressure gauge dials discovers to the Commission that in certain zones the pressure was nil, and in other zones it ranged from nothing to four ounces.

Thirteenth—That the gas company charged according to the individual reading of the gas meters

whether the customers obtained a commodity capable of ignition or not.

Fourteenth—The gas company required customers to make a deposit covering a period of six weeks, or payment of six weeks in advance.

Fifteenth—The Oklahoma Gas & Electric Company threatened to turn off the gas until the customer submitted to this extortion and to a further extortionate charge of \$1.00 for the physical act of turning it on again.

Sixteenth—The Corporation Commission, to correct this abuse and prevent this extortion, required them to rebate or make reparation for gas not actually furnished.

Seventeenth—The Corporation Commission under the Constitution might give any relief the evidence disclosed was proper, and was not confined to the pleadings.

Eighteenth—The Oklahoma Gas & Electric Company appealed to the Supreme Court of the state and did not offer to produce either before the Corporation Commission or the Supreme Court any evidence controverting the established facts, nor ask that the cause be remanded to the Commission for the introduction of such evidence.

Nineteenth—By the provisions of the constitution of the state and by judicial decision of the Supreme Court of the state the finding of facts by the Corporation Commission are prima facie, just and reasonable.

Twentieth—The Supreme Court of Oklahoma affirmed the judgment of the Corporation Commission and the plaintiff in error now appears in this Court declaring it has been deprived of its property without due process of law, as provided by the Fourteenth Amendment of the Constitution of the United States.

This Court has construed the Fourteenth Amendment so often that it will only be necessary to cite a few of its opinions.

Leeper v. Texas, 11 S. Ct. 577; 139 U. S. 462:

“Law in its regular course of administration through courts of justice is due process, and when secured by the law of the state, the constitutional requirement is satisfied and it is so secured by laws operating on all alike and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice.”

Twining v. N. J., 29 S. Ct. 14; 211 U. S. 78; 53 L. Ed. 97:

“Due process of law requires that the court which assumes to determine the rights of parties, shall have jurisdiction and that there shall be notice and opportunity for hearing, but, subject to these conditions, state laws, statutory or judicially

declared, which regulate procedure evidence and methods of trial are consistent with due process of law."

Framcomb et al. v. City and County of Denver,
40 S. Ct. 271; 252 U. S. 7 (Day, J.) :

"This Court, when dealing with the constitutionality of states statutes challenged under the Fourteenth Amendment, accept the meaning thereof as construed by the highest court of the state. (Citing *St. Louis and Kansas City Land Company v. Kansas City*, 241 U. S. 419; 36 S. Ct. 647; 60 L. Ed. 1072.) As the plaintiff had an opportunity to be heard before the board duly constituted by Section 300, they cannot be heard to complain."

People of the State of New York, ex rel. New York and Queens County Gas Company v. McCall et al., Public Service Commission, First District New York,
245 U. S. 345; 38 S. Ct. 122:

"Where a gas company appeared before a public service commission at a hearing on the question of ordering an extension of its mains and service pipes; cross-examined witnesses, introduced testimony and argued the case, and the case was re-examined by the appellate division of the Supreme Court on *certiorari* and reviewed by the Court of Appeals, there was no want of due process of law."

Detroit, Ft. Wayne & B. I. Ry Co. v. Osborn,
23 S. Ct. 540; 189 U. S. 384; 47 L. Ed 860:

"An objection that the state statute violates the Federal Constitution because it does not pro-

vide for notice to those who may be affected by it is not available to a party who was in fact given notice and who at the hearing objected to the action proposed to be taken under such statute."

Wilmington City Ry. Co. v. Taylor, 198 Fed. 159:

"The Fourteenth Amendment does not control the power of a state to determine by what process legal rights may be asserted or legal obligations enforced, provided the method adopted gives a reasonable notice and affords a fair opportunity to be heard."

Louisville & Nashville Railroad Company v. Railway Commission of Kentucky, 35 S. Ct. 146; 235 U. S. 601 (Pitney, J.), was an action brought up from the United States District Court of Kentucky upon its refusal to enjoin the enforcement of rate making and reparation (rebate orders). The laws of Kentucky gave the Railway Commission power to correct abuses and prevent extortion. It appears the railway had established rates and had maintained them in force for more than thirty years with reference to supplies, such as grain, barrels, boxes, etc., to the distilleries, and this was done for the purpose of having distilleries locate along their lines. Consequently the railway companies arbitrarily raised their rates and complaint was made to the Railway Commission of the State of Kentucky to re-establish the rates that had been in force. The Railway Commission of Kentucky by order re-established the former rates and required the railway company to make reparation or rebate, or to pay back to

the distillery companies the difference between the rates heretofore in effect and the rates arbitrarily put into effect by the railway company, and this Court held:

"The procedure under Ky. Stat., Chapter 829, for recovery before the State Railroad Commission of reparation for payments previously made to a carrier for transportation in excess of the rates found by such commission to be reasonable, cannot be said to deny the due process of law guaranteed by U. S. Const., 14th Amend., on the theory that there is no formal issue and no method of requiring the production of evidence, where there were pleadings sufficiently formal, and the carrier was permitted to raise such issues and introduce such evidence as it desired, and there is nothing to show that it suffered for lack of compulsory process against witnesses. (Ed. Note—For other cases, see Constitutional Law. Cent. Dig. Chapter 928, 936, 939, 942-946, 948, 949; Dec. Dig. Chapter 306)."

Upon consideration of the facts stated in the record and the brief and supplemental brief of defendant in error, and the sections of the Constitution of Oklahoma, and the adjudicated cases herein referred to of the Oklahoma Supreme Court and this Honorable Court, we submit our cause.

CHARLES H. RUTH,
MARIE S. RUTH,

Counsel for Defendants in Error.

OKLAHOMA NATURAL GAS COMPANY *v.* STATE
OF OKLAHOMA ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 37. Argued March 7, 1922.—Decided March 20, 1922.

A gas company whose franchise obliges it to render efficient service to the public and whose rates and service are subject, under the state law and constitution, to regulation by a public commission, and which has charged its customers the maximum rate allowed, on the basis of the quantities of gas furnished, is not deprived of property without due process of law by an order of the commission reducing bills to compensate for poor service (insufficient gas pressure) and requiring corresponding refunds to consumers. P. 239.

78 Okla. 5, affirmed.

ERROR to a judgment affirming an order of a commission by which the bills of a company engaged in distributing gas supplied by plaintiff in error were reduced and refunds to consumers were required.

Mr. C. B. Ames for plaintiff in error.

Mr. Charles H. Ruth, with whom *Mr. S. P. Freeling*, Attorney General of the State of Oklahoma, and *Marie S. Ruth* were on the briefs, for defendants in error.

MR. JUSTICE McKENNA delivered the opinion of the court.

Error to review a judgment of the Supreme Court of Oklahoma sustaining an order of the Corporation Commission of the State directing, on account of the failure of the Gas Companies to furnish adequate gas service, a refund in certain districts of Oklahoma City of from eight to twenty-five per cent. of the bills rendered by the companies during December, 1917, and January, 1918.

The initial steps in the proceedings against the Gas Companies were petitions filed before the Corporation

Commission of the State, and numbered 3188, 3192 and 3197. They charged that the Oklahoma Gas and Electric Company was a corporation of Oklahoma, and was granted a franchise by Oklahoma City to supply the latter and its inhabitants with natural gas for light, heat and power, and, as such corporation, exercised the right of eminent domain. And they alleged that the Oklahoma Natural Gas Company was also a corporation of Oklahoma for the purpose of transporting gas from Cushing, Oklahoma, to Oklahoma City, and was under contract to deliver gas to the pipe lines of the Gas and Electric Company.

The petitions represented in various ways in what the two companies were deficient and delinquent in the execution of the purpose of their incorporation in the supply of gas at certain times to those entitled to be served, and the prayers of the petitions varied according to the respective standpoints of the petitioners and their conceptions of remedies.

In No. 3188 it was prayed that the companies reveal their relationship and contracts in regard to supplying Oklahoma City with gas, and that the Electric Company show the daily consumption of gas by the city, the volume and pressure in ounces necessary to provide adequate service. There was the further prayer that the companies be required to provide and maintain gas storage facilities.

In No. 3192 it was prayed that the Electric Company be restrained from forcing collection of gas bills before the determination of the issue presented, the charge being that, notwithstanding the insufficiency of the gas supply, the company was threatening to require prompt payment of bills and in default thereof to discontinue service.

In No. 3197 (it was presented by the county attorney and his assistants) the relief asked was that the Commission take charge and management of the corporations,

they being delinquent in their duties. It was also prayed that the companies be declared in contempt of an order of the Commission previously rendered which required such efficiency in the distributing systems as to render adequate service, and dealt with accordingly.

Separate answers were made by the companies in Nos. 3188 and 3197. In No. 3192 the Electric Company alone answered.

Each company averred the exertion of all means within its power to supply the needs and requirements of the City with gas and was specific in the enumeration of its facilities and powers and their exertion, and denied faults and delinquencies.

The Corporation Commission by the constitution and laws of the State is given power and authority, and is charged with the duty, of supervising and regulating transportation companies and other public utilities, and given the same authority to prescribe rates which the State might prescribe or make. And the Supreme Court decided that any of the orders of the Commission prescribing rates and regulating the service of such utilities is as much a law of the State as if enacted by the legislature, and that a public utility in furnishing natural gas is as much subject to the provisions of such orders as if they had been made an integral part of the contract between the consumer and the public utility.

It was in view of the jurisdiction and powers of the Commission that the petitions in this case were presented to it. They were consolidated and testimony taken for and against them and the Commission set forth its conclusion in an opinion of great length—too long, we may say, to make even a summary of it practicable.

We can only say that the Commission found the quality of the gas deficient but otherwise found for the companies. For instance, the Commission found that storage facilities for a reserve supply as prayed were impossible. It found

also against the charge that the companies had been guilty of negligence for failure to extend their lines to other and more abundant sources of supply. Indeed, the Commission, intimating a doubt of its power to do so, refused to exercise the power against the companies, circumstances not demanding it.

The final order of the Commission was that discounts of various amounts from the payments made by consumers in certain districts (they were named) should be allowed. The discount, it was ordered, should be applied to bills for domestic consumption of gas only, and this consumption was considered to mean only gas used for physical comfort or for cooking in residences.

The prayer in No. 3197 that the Commission take charge and operate the property of the Oklahoma Gas and Electric Company was denied; also that fines for contempt be imposed was denied.

There were modifications of the order not necessary to mention. On error to the Supreme Court by the Oklahoma Natural Gas Company the order of the Commission was affirmed.

The Supreme Court in its opinion stated the points in litigation and said it was not controverted that the service was inadequate; the contention of the Gas Company being that "natural gas is a commodity for which the utilities are entitled to payment on a quantum basis, as shown by meter readings, and the adequacy or inadequacy of service does not enter into the payment of bills." The court rejected the contention and affirmed the order of the Commission, expressing its understanding of it to be that it proceeded "upon the theory that, inasmuch as the maximum compensation of the gas company is allowed upon the basis of adequate service, where the service is not kept to this standard the rate charged the public should be graded in proportion to the falling off in effici-

ency." Stating a further contention of the company in resistance to the order of the Commission, the court said it seemed to be that the company was entitled to the maximum rate "regardless of the efficiency of the service." The court rejected the contention, considering that the rule announced by the Commission was "entirely just and reasonable, provided a practical basis for its application" could "be established", and the court said it could "see no insuperable barrier in the way of doing" that. And the court further decided that the Commission had correctly solved the problem by basing the proportion of the maximum rate the company could justly collect from the public upon the quality of the service rendered as well as upon the quantity of gas furnished. And this solution of the problem, the court was of the view, the evidence supported.

The company assails the reasoning and conclusions of the court and Commission and asserts that they penalize the company "for failing to supply gas which nature had not produced." It supplied, is the contention, the maximum amount which it could produce and the Commission found that it was not negligent in failing to supply more. It is the contention, therefore, that the order of the Commission and the action of the Supreme Court in sustaining it, are offensive to the Constitution of the United States.

The contention is based on a wrong estimate of the action of the Commission and that of the court. Neither was based on deficiency in the volume of gas, but upon the failure of the company to transport it under sufficient pressure to render efficient service. It was the view of the Commission and the court that the company owed efficient service and for failing to supply it there should be a deduction in the compensation charged in proportion to the deficiency.

The company assails both conclusions as depriving it of property without due process of law. We cannot assent.

Both the Commission and the Supreme Court decided, construing the charter of the company, that the company was required to render efficient service, and we concur in that view, and that it was competent for the State to compensate the deficiency in the service—deficiency in the supply of gas—by a rebate of the payments to the company. The percentage of reduction and its adequate relation to a deficiency in service were necessarily determined by the Commission from the case as presented to it, and the Supreme Court upon consideration affirmed the determination as a just and supported relation. In the judgments of the Commission and the court we are unable to see error, certainly not an infringement of the Fourteenth Amendment.

We repeat, therefore, the action of the Commission and court were not, as represented by the company, a requirement of the impossible. It was simply and clearly the determination of what the franchise of the company required and the obligation to perform it, and the failure to perform justified a reduction of the fees charged or, if paid, a proportionate repayment.

We are not called upon, therefore, to review or answer the interesting argument of the company based upon the contention that the order of the Commission imposed upon the company the impossible or the unreasonable. It imposed, we repeat, the performance of the service that the Gas Company had agreed to perform.

Judgment affirmed.

MR. JUSTICE CLARKE took no part in the consideration and decision of this case.